

AGREEMENT NO. 220091

JOINT-USE LEASE AGREEMENT

Between

Commonwealth of Pennsylvania, acting
through the Department of Transportation,

and

City of Philadelphia, acting through
the Department of Public Property

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This Lease Agreement is made as of the 29th day of
March, 1990, by and between the Commonwealth of
Pennsylvania, acting through the Department of Transportation
("Commonwealth"), and the City of Philadelphia, acting through
the Department of Public Property ("City"). Intending to be
legally bound, the parties agree as follows:

ARTICLE 1
RECITALS

1.01 Commonwealth has under its jurisdiction certain
property acquired for the construction and use of Interstate
Route 95 (Legislative Route 1000, Section 795 Alternative)
("I-95"), and Interstate Route 676 (Legislative Route 67045,
Sections 9 to 11) ("Vine Street"), both limited access highways
pursuant to the Act of May 29, 1945, P.L. 1108, 36 P.S. §2391.1
et seq., and also within the jurisdiction of the Federal Highway
Administration (FHWA).

1.02 Commonwealth has determined that certain portions
of the I-95 right of way within the City of Philadelphia between
the Walt Whitman Bridge and the Ben Franklin Bridge, most
particularly those areas underneath the elevated highway, are not
needed for the free movement of traffic and could be made
available for joint-use leasing pursuant to Act 1974-37, as
amended, 71 P.S. §512(c).

1.03 Commonwealth has determined that certain portions of the Vine Street (I-676) right of way between I-95 and 18th Street in the City of Philadelphia may not be needed for the free movement of traffic or other transportation purposes during or after the currently proceeding reconstruction of Vine Street, and could therefore possibly be available for joint-use leasing pursuant to Act 1974-37, as amended.

1.04 Commonwealth and City previously have entered into certain joint-use and other agreements governing the use and maintenance of certain portions of the limited access highways in question. ("Prior Agreements"). The Prior Agreements, a list of which is attached hereto as Exhibit "A", are incorporated herein by reference.

1.05 Commonwealth has entered into certain leases and other agreements with private and public parties for certain portions of the limited access highways in question. ("Third-Party Agreements"). The Third-Party Agreements, a list of which is attached hereto as Exhibit "B", are incorporated herein by reference.

1.06 City has proposed that a land management body be established as a means to actively market the leasing of the areas in question not needed for the free movement of traffic and thereby generate funds to maintain those areas not leased,

especially the land underneath the elevated I-95. To this end, City and Commonwealth have cooperated in the establishment of the Interstate Land Management Corporation, a Pennsylvania non-profit corporation ("ILMC"). Maintain and maintenance as used in this Agreement does not relate to roadway maintenance as described in 23 USC §101, but rather pertains to that right of way maintenance as set forth herein.

1.07 In order to accomplish the transfer of the maintenance obligations to ILMC, the following agreements will be executed simultaneously with the execution of this Lease Agreement:

(a) City will enter into a Sublease Agreement ("Sublease I") with the Philadelphia Authority for Industrial Development ("PAID") for the premises that are the subject of this Lease Agreement. A copy of Sublease I is attached hereto as Exhibit "C".

(b) PAID and ILMC will enter into a Second-Tier Sublease ("Sublease II") pursuant to which ILMC shall assume the management and maintenance responsibility of City under this Lease Agreement. A copy of Sublease II is attached hereto as Exhibit "D".

(c) Commonwealth, City and PAID will enter into a Contribution Agreement ("Contribution Agreement") pursuant to

Commonwealth and City will contribute, as necessary, to the operations of ILMC. A copy of the Contribution Agreement is attached hereto as Exhibit "E".

ARTICLE 2 PREMISES

2.01 Commonwealth, pursuant to the authority contained in Section 2002(c) of the Administrative Code, 71 P.S. §512(c), hereby leases to City those parcels of real property within the Commonwealth's right of way for Interstate Route 95 between the Whitman and Ben Franklin Bridges not need for the free movement of traffic. ("Leased Premises"). A map of the Leased Premises is attached hereto as Exhibit "F". Any dispute over the area included in this Lease Agreement shall be resolved solely by Commonwealth based on their review of the official highway plans.

2.02 Commonwealth covenants and agrees that City, on observing and keeping the covenants, conditions and terms of this Agreement on City's part to be kept or performed, shall lawfully and quietly hold, occupy and enjoy the Leased Premises under the terms of this Agreement and any amendments thereto during the term of this Agreement without hindrance or molestation of Commonwealth or any person claiming under Commonwealth.

2.03 Commonwealth hereby authorizes City, its sublessees or assigns, to market the leasing of those parcels of real property within the Commonwealth's right of way for the Vine Street Expressway between I-95 and 18th Street. Rental income, if any, from the proposed lease with the Philadelphia Parking Authority for the parcel on the southside of Vine Street between 15th and 16th Streets attributable to the proposed parking garage will be assigned to ILMC.

ARTICLE 3
EXISTING AGREEMENTS

3.01 Commonwealth and City hereby agree that the Prior Agreements between them are suspended during the life of this Agreement except as otherwise set forth herein in Paragraph 3.03. Unless otherwise agreed, all Prior Agreements will be reactivated upon the termination of this Lease Agreement for any reason.

3.02 Concurrently with the execution of this Lease Agreement, Commonwealth and City herein have executed an Assignment and Assumption Agreement pursuant to which Commonwealth assigns and City assumes those rights and obligations of Commonwealth under the Third Party Agreements as set forth therein. A copy of the Assignment and Assumption Agreement is attached hereto as Exhibit "G".

3.03 The following agreements between Commonwealth and City are not superseded in any regard by this Lease Agreement and shall remain in full force and effect:

1. Agreement dated March 20, 1986
PennDOT Agreement No. 065014
Vine Street Expressway Maintenance Agreement
2. Agreement dated March 23, 1977
PennDOT Agreement No. 27835K
I-95 Cover Agreement
3. PennDOT Agreement Nos. 27835 through 27835N
Master Agreement and all Supplemental
Agreements
4. Any other Agreement not specifically
listed in Exhibit "A"

ARTICLE 4 TERM

4.01 The term ("Term") of this Lease Agreement is four (4) years, commencing on the date above first written renewable with the agreement of both parties for four (4) additional four-year terms, unless sooner terminated as provided in this Lease Agreement.

4.02 If City or its sublessees shall hold over after the expiration of the Term, such tenancy shall be from month to month on all terms, covenants and conditions of this Lease Agreement prevailing in the year immediately preceding such holding over.

4.03 In no event shall this Lease Agreement or occupancy thereunder or otherwise be construed as creating a fee simple title ownership in City or its sublessees.

ARTICLE 5
RENT

5.01 The flat rent for the Leased Premises is One Dollar (\$1.00) for each year of the Term, payable on the effective date of this Lease Agreement and on each anniversary of the effective date. In further consideration for this Lease Agreement, the income generated from the subleasing of the Leased Premises shall be utilized to perform the maintenance required of the City by Article 7 below.

5.02 In the event there are net revenues in any given fiscal year under this Lease Agreement as defined hereinafter in Paragraph 6.06, City shall pay them to Commonwealth as additional rent as required by 23 USC §156.

5.03 Rental payments shall be made to Commonwealth at its District 6-0 Offices, now located at 200 Radnor-Chester Road, St. Davids, PA 19087, c/o the Right of Way Unit. Additional rent payments shall be paid to Commonwealth no later than ten (10) days after receipt by City of the audited financial statements required by Paragraph 6.09 below.

5.04 If there are no net revenues in any fiscal year, no additional rent shall be due for such fiscal year and the proper officer of City shall so notify Commonwealth on or prior to the due date of the rental payment.

ARTICLE 6
MANAGEMENT CORPORATION

6.01 ILMC shall be controlled by a nine (9) member Board of Directors consisting of two (2) persons appointed by the Secretary of Transportation of the Commonwealth; two (2) persons appointed by the Mayor of the City of Philadelphia; one (1) person selected by the Philadelphia Chamber of Commerce; one (1) appointed by the State Senator from the Senatorial District in which the project is located, or his designee; one (1) appointed by a member of the House of Representatives alternating annually among the representative of the area in which the project is located beginning with the representative representing the district with the lowest numbered district; and two (2) persons selected by the communities most directly affected by the project. A representative from the Federal Highway Administration shall be an ex officio, non-voting member of the Board.

6.02 ILMC shall conduct its operations on a sound commercial basis in accordance with standard business practices. As a minimum, fair market rent shall be charged by ILMC for all subleases with private parties pursuant to Sublease II.

6.03 ILMC may not pledge the credit of the Commonwealth to any activity nor may it incur any debt for the Commonwealth.

6.04 The following types of action by the Board of Directors shall require two (2) votes by Commonwealth representatives and two (2) by City representatives: changes to the size of the corporation's staff; amendments to the by-laws of the corporation; and approval of the corporation's budget. A copy of the initial by-laws of ILMC is attached hereto and incorporated herein as Exhibit H.

6.05 ILMC shall prepare and file with Commonwealth, by December 1 of each year, a budget for each coming fiscal year setting forth in reasonable detail all projected gross revenues to be received and operating expenses to be incurred by it for such year. Commonwealth may object in writing to City with respect to particular items or expenses included in the budget no later than April 1 of such year and City and ILMC shall use their best efforts to cooperate with Commonwealth in resolving such objections. In the event City, Commonwealth and ILMC are unable to resolve the objections by May 1 of any year, Commonwealth shall have the right to submit the dispute no later than May 15 of such year to the American Arbitration Association in Philadelphia, Pennsylvania, or to a mutually agreeable substitute. Commonwealth and City hereby agree that the decision

of the arbitrators will not be binding and that either party may institute an action in the appropriate jurisdiction to resolve the dispute if the results of the arbitration process are deemed unacceptable. The costs of the resolution of any such dispute shall be borne equally by Commonwealth and City.

6.06 Net revenues shall mean gross revenues less operating expenses of ILMC as defined in Paragraph 6.07 below.

6.07 Gross revenues shall mean all rentals, receipts, revenues, income, payments and other moneys received by or on behalf of ILMC, whether from City, Commonwealth, other public entities or private parties, and whether from the subleasing of the Leased Premises under this Lease Agreement, from rental payments made to Commonwealth and assigned to City under this Lease Agreement, or from cash or in kind contributions, and all rights to receive the same whether in the form of accounts receivable, contract rights, chattel paper, instruments, general intangibles, or other rights and the proceeds thereof, including any insurance proceeds and any condemnation awards derived therefrom, whether now existing or hereafter coming into existence, and whether now owned or held or hereafter acquired in connection with the Leased Premises.

6.08 Operating Expenses shall mean all expenses of ILMC determined in conformity with generally accepted accounting principles, including reasonable direct expenses of operations

(including utilities, maintenance, repair and alteration), the salary of a property manager and reasonable related administrative expenses determined in conformity with Generally Accepted Accounting Principles, and all taxes or contributions or payments in lieu thereof, assessments and charges, including, without intending to limit the generality of the foregoing, income, profits, property, franchise, payroll and excise taxes. "Generally Accepted Accounting Principles" means those accounting principles applicable in the preparation of financial statements of non-profit corporations, as promulgated from time to time by the Financial Accounting Standards Boards or such other body recognized as authoritative by the American Institute of Certified Public Accountants, or any successor body.

6.09 City covenants to keep or cause to be kept by ILMC, and to make available to Commonwealth and FHWA upon request, accurate records and books of account with respect to the Leased Premises and gross revenues and operating expenses connected with this Lease Agreement and, within 120 days after the end of each fiscal year, to have prepared in accordance with generally accepted accounting principles, consistently applied, audited statements of such records and accounts by a certified public accountant, which shall include a statement of operating revenues and expenditures and changes in financial position for such fiscal year and a balance sheet as of the last day of such fiscal year and which shall include supplemental information providing a detailed report of operating expenses. A copy of the

statement shall be furnished to Commonwealth within such 120 day period.

6.10 To the extent there is additional rent due Commonwealth from City under Paragraph 5.02, a credit shall be given to City in the amount of 50% of the additional rent as set forth in this Paragraph. The credit shall be for and up to the previous contributions of City under the Contribution Agreement (Exhibit "E"). Credits shall cease after all contributions of City are repaid.

6.11 Legal and other professional services shall be obtained from Commonwealth or City if possible. It is understood that the staff of ILMC will initially consist of one person, a property manager who shall be compensated on the basis of the time devoted to this activity rather than on the basis of a salary only. The size of the staff may be changed by the Board of ILMC provided that change be approved by the Commonwealth and City representatives as set forth in Paragraph 6.04.

ARTICLE 7 MAINTENANCE OBLIGATIONS

7.01 All maintenance obligations for the Vine Street corridor shall be controlled by the Vine Street Expressway Maintenance Agreement, Agreement No. 065014, dated March 20, 1986, which Maintenance Agreement has been excepted from this Lease Agreement in paragraph 3.03 above.

7.02 Maintenance obligations for the Leased Premises in the I-95 corridor shall be as set forth in the Maintenance Specifications attached hereto and incorporated herein as Exhibit "I". Responsibility for structural elements, landscaped areas, and elevated sections and cover areas are provided for therein. Roadway maintenance of the surface of I-95 is not included within the maintenance obligation of City under this Lease Agreement.

7.03 Commonwealth has no obligation to make repairs or alterations, or provide any maintenance whatsoever in regard to the Leased Premises in the I-95 corridor, except as set forth in the Maintenance Specifications. City agrees that no claim will be made against Commonwealth arising out of the condition of the Leased Premises and/or the occupancy thereof by or with the approval of City, its sublessees, agents or assigns.

7.04 Except as set forth in the Maintenance Specifications, City shall, at its sole expense and risk, maintain or cause to be maintained all of the Leased Premises in a safe and sanitary condition, and not to do or to permit any act or practice injurious to the Leased Premises or the adjacent highway and its use. This shall include landscaping, including the care of plants and trees and the regular mowing of grass, removal of debris from the Leased Premises and maintenance of paving, driveways, fencing, guiderails and curbs, removal of graffiti from noise and retaining walls and other structures.

City shall also be responsible for snow and ice removal and adequate security of the Leased Premises. Roadway maintenance of the surface of I-95 is not included within the maintenance obligation of City under this Lease Agreement.

7.05 Except as set forth in the Maintenance Specifications, City shall, throughout the term of this Lease Agreement, maintain and keep the Leased Premises from waste and nuisance, and shall deliver up the Leased Premises in a clean and sanitary condition, reasonable wear and tear excepted. In the event City shall neglect to reasonably maintain the Leased Premises, Commonwealth shall have the right, but not the obligation, to cause repairs or corrections to be made, and any costs therefor shall be payable by City to Commonwealth as additional payments hereunder on the next payment date.

7.06 City shall permit Commonwealth and FHWA, its officers, agents and employees to enter onto and upon the Leased Premises at all reasonable times for the purpose of inspection of the same or doing of any and all acts necessary or proper on said premises in connection with the protection, maintenance, repair, restoration and operation of the abutting highway structures and their appurtenances.

7.07 Maintenance of the I-95 Cover in the Society Hill Neighborhood is included as a responsibility of ILMC even though

that area has not been demised to City for leasing purposes. Treatment of any future cover areas in the I-95 corridor would be subject to further agreement.

7.08 Contracts for the performance of maintenance obligations under this Lease Agreement not performed by City personnel will be competitively and publicly bid in accordance with generally accepted practices.

ARTICLE 8 USES OF PREMISES

8.01 Those areas which Commonwealth owns in fee simple may be used for any purpose which is consistent with the public interest and not inconsistent with Commonwealth's use of its facilities, subject further to the prohibitions specifically set forth below.

8.02 Those parcels in which Commonwealth has an easement for highway purposes may be used for any transportation-related purpose, for example, public parking, unless the lessee or sublessee is the owner of the fee underlying the highway easement, in which case the provisions of paragraph 8.01 above apply.

8.03 No sublease shall be entered into which would result in an interference in any way with the safety of the public's use of the adjacent highway or which would expose any

member of the public, whether or not said member of the public is using the highway, to any hazardous or unsafe condition as a result of the use of the Leased Premises. Nor shall any sublessee be permitted to interfere in any manner with Commonwealth's access to the highway facility for the purpose of inspection, maintenance and reconstruction when necessary, for which Commonwealth reserves the right at all times to accomplish. It is understood that neither City nor any of its sublessees shall have the right of ingress and/or egress to and/or from any abutting State highway without having first obtained a highway occupancy permit from Commonwealth.

8.04 City and any sublessee, prior to utilization of the Leased Premises for the parking of motor vehicles, shall take into consideration the following criteria:

- A. Parking design to assure orderly and functional parking.
- B. Plantings or other screening methods to enhance the esthetics and appearance of the premises.
- C. Type of surfacing and utilization of lighting, fencing, striping and curbing.
- D. Access for fire protection and fire fighting equipment.

8.05. City shall not use or permit the use of the Leased Premises for the storage or manufacture of flammable, explosive or hazardous materials. City shall not use or permit the use of the Leased Premises for any purpose which is determined by Commonwealth or the United States Department of Transportation, Federal Highway Administration ("FHWA") to be a hazard to highway use.

private, or which may make void or voidable any insurance then in force with respect to the Leased Premises.

8.09 City shall not use or occupy the I-95 cover area, nor allow the I-95 cover area to be used or occupied for retail or commercial purposes without the specific written approval of all of the organizations representing Queen Village, Society Hill and Pennsport.

ARTICLE 9
ASSIGNMENTS, SUBLETTING AND LIENS

9.01 Commonwealth acknowledges that City intends to sublease the Leased Premises to PAID. Commonwealth has reviewed the terms of Sublease I. Commonwealth hereby consents to the subletting of the Leased Premises to PAID and approves the terms of Sublease I.

9.02 Commonwealth acknowledges that, pursuant to Sublease I, PAID will simultaneously enter into Sublease II with ILMC which will give ILMC the right to sublease portions of the Leased Premises to private parties (individually and collectively, the "Private Sublessee(s)"). Commonwealth hereby consents to the subletting of all or portions of the Leased Premises to Private Sublessee(s), provided that (a) each Private Sublessee has been selected in accordance with the fair and equitable guidelines and procedures established by the Board of

Directors of ILMC, (b) the form of sublease individually and collectively, the "Private Sublease(s)") has been approved by the Board of Directors of ILMC and (c) the sublease is otherwise in conformance with applicable State and Federal laws and regulations. A copy of the Form Sublease is attached hereto as Exhibit "J".

9.03 Except as expressly set forth herein, City may not assign, pledge, mortgage or otherwise transfer or encumber the premises or this Lease Agreement, nor sublet all or any part of the Leased Premises nor permit the same to be used or occupied by anyone without the prior written approval of Commonwealth, which approval shall not be unreasonably withheld or delayed.

9.04 The terms and provisions of this Lease Agreement shall extend to, and be binding upon and inure to the benefit of, any successor or assign of Commonwealth or City, except as set forth below.

9.05 With the prior written approval of Commonwealth, City or its assign may grant leasehold mortgages of all or portions of the Leased Premises. The granting of a leasehold mortgage shall not constitute an assignment of this Lease Agreement, nor shall any leasehold mortgagee not in possession be deemed an assignee of this Lease Agreement, the Sublease Agreement or any Private Sublease, nor a sublessee of any portion

of the Leased Premises so as to require such leasehold mortgagee to assume the obligations of City under this Lease Agreement, of PAID under the Sublease Agreement, or of any Private Sublessee. A leasehold mortgagee in possession and the purchaser at any sale of all or any portion of the Leased Premises upon foreclosure of any leasehold mortgage, or the assignee of any portion of the Leased Premises pursuant to an assignment in lieu of foreclosure, shall be deemed to be an assignee of City, PAID or a Private Sublessee, as applicable, and shall be deemed to have assumed the obligations of City under this Lease Agreement, of PAID under the Sublease Agreement, or the Private Sublessee(s), as applicable, from and after the date of such purchase or assignment. City shall give or cause to be given written notice to Commonwealth of all leasehold mortgagees. In no event shall any leasehold mortgage constitute a lien on the land itself.

9.06 Commonwealth shall give notice of any Event of Default, as defined in Article 18 of this Lease Agreement, to all leasehold mortgagees affected by the event of default. Commonwealth shall not terminate this Lease Agreement if a leasehold mortgagee has caused the event of default and after giving notice of the event of default to the leasehold mortgagee, such leasehold mortgagee notifies Commonwealth, within thirty (30) days thereafter, that such leasehold mortgagee intends to remedy such event of default and, within thirty (30) days after such notice to Commonwealth, commences and diligently pursues the

cure of such event of default. A leasehold mortgagee shall, upon giving notice to Commonwealth of its intent to cure an event of default, be given a three-month period in which to remedy the event of default. Commonwealth shall accept the performance of any leasehold mortgagee as though the performance had been done by City, PAID, or a Private Sublessee, as applicable.

ARTICLE 10 IMPROVEMENTS

10.01 With the prior written approval of Commonwealth and the Federal Highway Administration, City may construct or permit the construction of permanent improvements on or to the Leased Premises provided all of the terms of this Lease Agreement are followed. Paving and other minor or temporary improvements to the Leased Premises shall not be considered a permanent improvement requiring approval by Commonwealth. Approval of Commonwealth for permanent improvements to the Leased Premises shall not be unreasonably withheld or delayed.

10.02 At the discretion of Commonwealth, the leasing of areas for the placement of permanent improvements may require a separate agreement between Commonwealth and the sublessee, and/or may warrant a direct lease between Commonwealth and the proposed occupant. Income from parcels marketed by City or its sublessee, agent or assign will be assigned to City under this Agreement, and utilized solely for the purposes of this Lease Agreement.

10.03 All improvements constructed on the Leased Premises shall comply with all applicable local, state and federal laws, ordinances, codes and regulations.

10.04 All improvements shall be designed and constructed so as not to interfere with the safe use of the adjacent highways and streets. All improvements shall be constructed to permit access to the adjacent highway's structural elements for the purposes of inspection, maintenance and reconstruction of the structural elements.

10.05 Upon termination of this Lease Agreement, City shall, at the option of Commonwealth, abandon any improvements to the Leased Premises. Commonwealth will not compensate or reimburse City upon termination of this Lease Agreement for any improvements, alterations or additions to the Leased Premises.

10.06 City may erect only such directional or operation signs as approved by Commonwealth in writing. No signs shall be attached to or painted on elevated structures of the highway. Further, any on-premise signs, displays or devices erected on structures occupying highway air space shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by the Pennsylvania Department of Transportation (PennDOT) and the Federal Highway Administration (FHWA) with respect to number, size, location, safety of the traveling public and design.

10.07 City shall require that all private lessees provide protection to the highway piers located within the area in which they lease through the placement of bollards. This requirement may be waived with the written approval of Commonwealth, with the concurrence of FHWA.

ARTICLE 11
IMPOSITIONS AND UTILITY CHARGES

11.01 City shall pay, or cause to be paid, before delinquency, all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, or payments in lieu thereof, whether general and special, ordinary or extraordinary, together with interest and penalties, which are levied upon or assessed against all or any part of the premises or the use or occupation of all or any part of the premises. Specifically, City agrees to make all payments in lieu of taxes which may be levied on the Leased Premises during the term of this Agreement as provided in Section 2002(c) of the Administrative Code of 1929, as amended, 71 P.S. §512(c), and 67 Pa. Code §495.9.

11.02 City agrees to and shall protect and hold harmless Commonwealth and the Leased Premises from liability for any and all such taxes, assessments and charges, together with any interest, penalties or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof.

11.03 City agrees to, and shall, pay or appeal all such foregoing taxes, assessments and charges within thirty (30) days after the date of delinquency thereof and give written notice of each payment or appeal to Commonwealth within ten (10) days after such payment or appeal is made.

11.04 City may appeal or otherwise object to any applicable tax, assessment or charge at its sole expense.

11.05 If City fails to pay or appeal such taxes, assessments or charges, or fails to give written notice of any payment or appeal thereof as herein provided within ten (10) days after such payment or appeal is made, Commonwealth may, at its option, at any time after such ten (10) day period, pay such taxes, assessments or charges, together with all penalties and interest which may have been added thereto because of City's delinquency or default, and may likewise redeem the Leased Premises or any part thereof, or the buildings or improvements situated thereon, from any tax sale or sales. Any such amounts so paid by Commonwealth shall become immediately due and payable as rent by City to Commonwealth, together with interest thereon from the date of payment by Commonwealth until reimbursement by City. Any such payment by Commonwealth shall not be deemed to be a waiver of any other rights which Commonwealth may have under the provisions of this Agreement or as provided by law.

11.06 City shall pay, or cause to be paid, before delinquency, all charges for utility services to the Leased Premises, including but not limited to charges for water, gas, light, heat, telephone, electricity and communications services. Neither City nor Commonwealth shall be responsible for the installation of any utility facilities or meters required to furnish utility services to all or any part of the premises.

11.07 City agrees to and shall protect and hold harmless Commonwealth and the Leased Premises from liability for any and all such utility charges, together with any interest, penalties or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof.

11.08 City agrees to, and shall, pay or appeal all such foregoing utility charges within thirty (30) days after the date of delinquency thereof and give written notice of each payment or appeal to Commonwealth within ten (10) days after such payment or appeal is made.

11.09 City may appeal or otherwise object to any applicable utility charge at its sole expense.

11.10 If City fails to pay or appeal such utility charges, or fails to give written notice of any payment or appeal thereof as herein provided within ten (10) days after such

payment or appeal is made, Commonwealth may, at its option, at any time after such ten (10) day period, pay such utility charges, together with all penalties and interest which may have been added thereto because of City's delinquency or default, and may likewise redeem the Leased Premises or any part thereof, or the buildings or improvements situated thereon, from any sale or sales. Any such amounts so paid by Commonwealth shall become immediately due and payable as rent by City to Commonwealth, together with interest thereon from the date of payment by Commonwealth until reimbursement by City. Any such payment by Commonwealth shall not be deemed to be a waiver of any other rights which Commonwealth may have under the provisions of this Agreement or as provided by law.

ARTICLE 12 INDEMNIFICATION

12.01 City agrees to indemnify, save harmless and defend if requested, Commonwealth and FHWA, its agents and employees from and against any and all claims, demands, damages, costs and expenses arising from the occupancy of the Leased Premises during the term of this Agreement or from any breach on the part of City of any condition of this Lease Agreement, or from any act of negligence or misconduct of City, its officers, agents, contractors, employees, subtenants or assigns in or about the Leased Premises to the extent of liability under the Tort Claims Act, 42 Pa. C.S.A. §8501, et seq. In case of any action

or proceeding brought against Commonwealth by reason of any such claim, City, on notice from Commonwealth, covenants to defend such action or proceeding by counsel acceptable to Commonwealth.

12.02 City shall require each Private Sublessee to indemnify, hold harmless, and defend (if requested) Commonwealth, FHWA, CITY, and PAID and their respective officers and employees, from and against any and all claims, suits and actions brought for or on account of any loss or damage sustained due to any act or omission of the Private Sublessee, its agents, sublessees, employees, assignees or contractors.

12.03 This Article shall not be construed as a waiver of the immunity of City or Commonwealth under the Tort Claims Act; nor shall this Article be construed as a limitation on City or Commonwealth in asserting any rights or defenses available to it under the Tort Claims Act. This article shall also not be construed as a waiver of the immunity of the FHWA or a limitation on FHWA in asserting any rights or defenses available to it.

12.04 This Article does not confer a third party beneficiary right of action upon any person whatsoever.

ARTICLE 13 INSURANCE

13.01 City shall utilize its self insurance fund for any payments due under the indemnification contained in Article 12 above.

13.02 City shall cause each Private Sublessee to maintain the following insurance for the limits of liability set forth below or any other limits which may be reasonably required by Commonwealth from time to time:

(a) Comprehensive General Liability Insurance, with broad form endorsement, covering personal injury, and property damage occurring in, on or about the Leased Premises in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury (including death) and One Million Dollars (\$1,000,000.00) for property damage. The insurance required by this paragraph shall include endorsements for contractual liability, independent contractors, premises/operations, and products/completed operations.

(b) All-Risk Extended Coverage Insurance, naming Commonwealth, the City, and PAID as loss payees, insuring all improvements on the applicable portion of the Leased Premises against loss or damage from fire, flood, theft and other casualties (including, without limitation, vandalism and malicious mischief) in an amount equal to the full insurable replacement value of the improvements on the applicable portion of the Leased Premises.

(c) Worker's compensation insurance covering all persons employed in connection with any work done on or about the applicable portion of the Leased Premises, as required by law.

(d) Such other insurance on the Leased Premises and against such other insurable hazards as Commonwealth or City may reasonably require.

13.03 All insurance policies required by this Article shall name Commonwealth, City and PAID as additional insureds, as their interests may appear. All insurance policies required by this Article shall include the following cross liability endorsement:

"CROSS LIABILITY: It is understood and agreed that the insurance afforded by this policy or policies for more than one insured shall not operate to increase the limits of the companies' liability, but otherwise shall not operate to limit or void the coverage of any one insured as respects claims against the same insured by any other insured or the employees of such other insured."

Each policy of insurance shall include an endorsement that such policy shall not be cancelled, changed or permitted to expire without at least thirty (30) days prior written notice to Commonwealth, City, and PAID. Unless otherwise stated, all insurance required herein shall be obtained under valid and enforceable policies issued by insurers authorized to transact business in the Commonwealth of Pennsylvania.

ARTICLE 14 RIGHT OF ENTRY

14.01 Commonwealth specifically reserves the right to entry by any authorized officer, engineer, employee, contractor or agent of Commonwealth or FHWA at all reasonable times for the

purpose of inspecting the Leased Premises, or the doing of any and all acts necessary or proper on the Leased Premises in connection with the protection, maintenance, repair, alteration, painting and operation of the highway and its appurtenances; provided, further, that Commonwealth reserves the further right, at its discretion, to immediate entry upon the Leased Premises and to take immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of the highway, in which event City shall be relieved from the performance of all conditions or covenants specified herein during the term of Commonwealth's occupancy.

ARTICLE 15
LIMITED ACCESS DESIGNATIONS

15.01 Limited access designations, if any, through or around the Leased Premises shall remain as such, subject to the terms of this provision. Ingress, egress and regress to and from the Leased Premises shall be limited to the purposes of this Lease Agreement and shall be confined to those access points necessary for use of the Leased Premises. If requested by Commonwealth and only at the direction of Commonwealth, right of way fencing, if any, must be relocated or erected by City at the line separating the Leased Premises from the limited access area retained by Commonwealth for the free movement of traffic, all at the sole cost and expense of City. City shall be liable for any

damages to Commonwealth-owned fences, guiderails or other objects in any way resulting from or attributable to the use and occupancy of the Leased Premises by City or any person lawfully entering upon the same.

ARTICLE 16
COMPLIANCE WITH LAW

16.01 City shall not use or permit any use of the Leased Premises in any manner which is prohibited by the provisions of any federal, state or local statutory or regulatory enactment.

16.02 City shall secure and pay the costs of all necessary permits and licenses required by a federal, state or local statutory or regulatory enactment, and shall comply with applicable local building codes. Any improvements shall be fire resistant in accordance with the provisions of the applicable local building codes found to be acceptable by Commonwealth and the Federal Highway Administration.

ARTICLE 17
DISCRIMINATION AND INTEGRITY PROVISIONS

17.01 City and Commonwealth, for themselves, their successors and assigns, as part of the consideration hereof, hereby covenant and agree (1) that no person, on the ground of race, color, religion, sex or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise

subjected to discrimination in the use of the Leased Premises; (2) that in connection with the construction of any improvements on the Leased Premises and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees, contractors or subcontractors; (3) that no discrimination shall be practiced against the public in access to and use of the Leased Premises; and (4) that City shall use the premises pursuant to the provisions of the Commonwealth's non-discrimination Federal and State equal opportunity requirements as set forth in Exhibits "K1" and "K2" attached hereto.

17.02 City and Commonwealth hereby also covenant and agree that they will abide by the Commonwealth's integrity provisions attached hereto and incorporated herein as Exhibit "L".

ARTICLE 18 EVENTS OF DEFAULT

18.01 The following are events of default under this Lease Agreement:

(a) Failure of City or Commonwealth to perform any monetary obligation of City or Commonwealth under this Lease Agreement, as applicable, when such failure has continued for thirty (30) days after receipt of notice of such failure from the

non-breaching party. Such events of default shall include, but not be limited to the following:

- i. Failure to pay rental payments to Commonwealth.

- ii. Misuse of funds.

- iii. Failure to appropriate funds for fulfillment of the Contribution Agreement.

(b) Failure of City or Commonwealth to perform any non-monetary obligation of City or Commonwealth, as applicable, under this Lease Agreement when such failure has continued for sixty (60) days after receipt of notice of such failure from the non-breaching party, or, if such failure cannot reasonably be cured within sixty (60) days, if City or Commonwealth has failed within such sixty (60) day period to take such action as would reasonably be taken in order to cure such failure. Such events of default shall include, but not be limited to the following:

- i. Failure to perform the maintenance obligations imposed by this Lease Agreement.

- ii. Failure to collect rental payments from sublessees.

- iii. Failure to abide by and enforce the non-discrimination covenants imposed by this Lease Agreement.

(c) Failure of City or Commonwealth to perform any of its respective obligations under the Contribution Agreement.

ARTICLE 19
REMEDIES

19.01 Upon the occurrence of an event of default, Commonwealth or City may, at its option, exercise one or more of the following remedies, as applicable:

(a) institute an action against the party in default for amounts due under this Lease Agreement;

(b) institute an action against the party in default to enforce performance of the terms and covenants of this Lease Agreement;

(c) re-enter and take possession of the Leased Premises, or portion of the premises and operate the same for the account and on behalf of City.

(d) if applicable, exercise any remedies which may be available to City or Commonwealth under the Contribution Agreement.

(e) if applicable, terminate this Lease Agreement in whole or in part as provided for below.

19.02 If an event of default under this Lease Agreement arises out of the act or omission of a Private Sublessee, and the

remedy of such Event of Default can reasonably be confined to actions affecting such Private Sublessee only, Commonwealth shall exercise the remedy or remedies set forth in this Article so as to affect only that portion of the Leased Premises which is subleased to such Private Sublessee.

19.03 As long as the Contribution Agreement is in effect and not in default, this Lease Agreement can be terminated in whole during the term only if City repeatedly fails to fulfill its maintenance obligations under this Lease Agreement. After the Contribution Agreement is no longer in effect, Commonwealth and City shall, as an additional remedy upon the occurrence of any event of default, be entitled to terminate this Lease Agreement upon thirty (30) days' written notice to the party in default. This Lease Agreement may be terminated in whole at the end of the term by either party for any reason.

19.04 Commonwealth may, upon thirty (30) day's written notice, terminate this Lease Agreement as to specific parcels included in the Leased Premises in the event Commonwealth determines that such parcel is needed for highway or related transportation purposes.

19.05 In the event of the termination of this Lease Agreement in whole or in part, City will peaceably and quietly

leave, surrender and yield up to Commonwealth all or the part of the Leased Premises in question with all appurtenances and fixtures in good order, condition and repair, reasonable wear and tear excepted, and damage by earthquake, by fire, by public calamity, by act of God or by any other circumstances over which City has no responsibility or control excepted. The further use of the Leased Premises or part thereof after such termination by City shall be deemed, held and taken as a forceable detainer thereof by City, and Commonwealth may, without notice, re-enter and take possession thereof, and with or without force, and with or without legal process; and if any suit be brought by Commonwealth against City for the breach of any condition or covenant herein contained by City, or any summary action be brought by Commonwealth for forfeiture of this Lease Agreement, or to recover possession of the premises or part thereof, City agrees to pay reasonable attorneys' fees and costs for commencing and prosecuting said action. City further agrees that it will not enter into any sublease or occupancy agreement with respect to the Leased Premises which does not provide that if Commonwealth takes possession of the Leased Premises in accordance with the provisions of this Article 19, the subtenant will recognize Commonwealth as its lessor under such sublease or occupancy agreement. Commonwealth shall have the power to terminate any subleases or occupancy agreement upon termination of this Lease Agreement.

19.06 Commonwealth agrees that if it takes possession of the Leased Premises pursuant to the provisions of this Article 19, it may, at its discretion, recognize any sublease or occupancy agreement with respect to the Leased Premises and City hereby grants to Commonwealth the right to collect all rents and charges payable pursuant to such subleases or occupancy agreements.

19.07 Any signs or other appurtenances placed on Commonwealth-owned property pursuant to any provision hereof are the personal property of City and shall be removed by City, excepting those appurtenances specifically excluded below, upon the termination of this Lease Agreement, and said property shall be restored to its previous condition, excepting any paving, resurfacing or reconstruction to the property, or wheel rails and column guards, at the expense of City and without any expenditure by Commonwealth, provided, that if any such signs or appurtenances, excepting those specifically excluded herein, are not so removed after thirty (30) days' written notice from Commonwealth to City, Commonwealth may proceed to remove the same and to restore the said premises, and City shall pay Commonwealth, upon demand, the reasonable cost and expense to it of such removal and restoration, or Commonwealth may, in its absolute discretion, elect to declare the same the property of Commonwealth, whereupon all right, title and interest of City therein shall forthwith terminate.

ARTICLE 20
GENERAL TERMS

20.01 Pennsylvania Law to Apply: This Lease Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

20.02 Disputes: Any disputes arising out of this Lease Agreement against Commonwealth are within the jurisdiction of the Board of Claims. 72 P.S. §4651.1 et seq.

20.03 Notices: Any notice under the terms of this Lease Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid. If such notice is given by City, it shall be submitted to Commonwealth's Engineering District 6-0 Office, now located at 200 Radnor-Chester Road, St. Davids, Pa 19087; and if given by Commonwealth, such notice shall be submitted to City of Philadelphia, Commissioner of Public Property, 1020 Municipal Services Bldg. Philadelphia, Pa. 19102.

20.04 Parties Bound: This Lease Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective assigns and successors in interest, whether by operation of law or otherwise.

20.05 Approval of Commonwealth: Where approval of Commonwealth is required under the terms of this Lease Agreement, such approval shall be in writing and executed by a Deputy Secretary of Transportation. Where the approval of Commonwealth is contingent upon prior approval of the Federal Highway Administration under this Lease Agreement or otherwise, Commonwealth will not grant approval in the event such prior approval is not obtained.

20.06 Complete Agreement: This Lease Agreement sets forth all the promises, agreements, conditions and understandings between Commonwealth and City relating to this matter, except as specifically excepted in this Lease Agreement. There are no promises, agreements, conditions or understandings, either oral or written, between Commonwealth and City other than those set forth in this and associated agreements.

20.07 Article Numbers and Captions: The captions, article numbers and paragraph numbers appearing in this Lease Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Lease Agreement nor in any way affecting this Lease Agreement.

20.08 Partial Invalidity: If any term, covenant or condition of this Lease Agreement or the application thereof to any party or circumstance is held to be invalid or unenforceable, the remainder of this Lease Agreement, or the application of such term, covenant or condition to parties or circumstances other than those to which the Lease Agreement was held invalid or unenforceable, shall not be affected by the holding of invalidity or unenforceability. Each remaining term, covenant or condition of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law.

20.09 Amendment; Governing Law: This Lease Agreement may only be amended, modified or supplemented by an agreement in writing signed by both Commonwealth and City.

20.10 Survival: Any agreement, covenant or condition set forth in this Lease Agreement which, by its nature, would reasonably be expected to be performed after the expiration or earlier termination of this Lease Agreement shall survive and be enforceable after the expiration or earlier termination of this Lease Agreement. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Lease Agreement, shall survive any termination of this Lease Agreement.

20.11 Covenants Independent: Performance of all of the terms, covenants and conditions of this Lease Agreement shall be

independent of the performance of all and every other term, covenant and condition of this Lease Agreement.

20.12 Waiver of Conditions: No obligation of any party under this Lease Agreement shall be deemed waived, and no breach excused unless such waiver or consent shall be in writing and signed by the authorized official. Any consent to, or waiver of, a breach under this Lease Agreement, whether express or implied, shall not constitute a consent to or waiver of, or excuse for, any other different or subsequent breach.

20.13 Compliance with Regulations: It is understood and agreed by and between the parties that City shall comply with the terms and provisions set forth in 67 Pa. Code §495.1 et seq, entitled "Leasing of Real Property", and 23 C.F.R. §713.204, entitled "Management of Airspace."

20.14 Mutual Consent: Notwithstanding anything therein contained to the contrary, this Lease Agreement may be terminated, and the provisions of this Lease Agreement may be altered, changed, or amended by the mutual written consent of the parties hereto.

20.15 Rights and Remedies Cumulative: The rights and remedies provided by this Lease Agreement are cumulative and the use or non-use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies.

Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

20.16 Waiver of Act 1979-100 Rights: City waives any rights that it may have under the terms of Act 1979-100, 71 P.S. §513(e) (7), in the event any part of the leased premises is sold by Commonwealth.

20.17 Effective Date: The effective date of this Lease Agreement shall be thirty (30) days from March 29, 1990, the date upon which Commonwealth completed the final processing and distributed executed duplicates thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed, sealed and delivered by their proper officials, pursuant to due and legal action authorizing the same to be done.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Michael D. Sullivan 3/28/90
Signature Date

BY Harry Haack 3/28/90
Signature Date

EXECUTIVE SECRETARY
Title
(SEAL)

DEPUTY SECRETARY
Title

ATTEST:

CITY OF PHILADELPHIA

Kary Anne Letic 3/27/90 BY Benjamin R. Elmer 3/27/90
Title: Levasser Asst. Date Title: Commissioner of Date
Public Property

APPROVED AS TO LEGALITY
AND FORM

PRELIMINARY APPROVAL

BY W.D.W. Cobb 3/26/90
Chief Counsel Date

BY W.D.W. Cobb 3/26/90
Assistant, Counsel Date
Chief

APPROVED AS TO LEGALITY
AND FORM

RECORDED NO 220091
Certified Funds Available
Under Activity Program

David T. Doherty
Deputy Attorney General Date

SYMBOL _____

AMOUNT _____

BY _____
Signature Date 3/29/90

Title

APPROVED FOR
OFFICE OF BUDGET AND ADMINISTRATION

BY W.H. Pestre 3/25/90
Comptroller

APPROVED AS TO FORM
CHARISSE R. LILLIE, CITY SOLICITOR
Per R. Matthew Fitzgibbon Jr. 3/27/90
Chief Assistant City Solicitor

PRIOR AGREEMENTS

1. Parcel bounded by Oregon Avenue and Swanson Street.
2. Parcel bounded by Ritner Street and Wolf Street.
3. Parcel bounded by Snyder Street, Water Street, Jackson Street and Front Street.
4. Parcel bounded by McKean Street, Water Street, Snyder Avenue and Front Street.
5. Parcel bounded by Mifflin Street, Water Street, McKean Street and Front Street.
6. Parcel bounded by Front Street, between Wharton and Reed Streets.
7. Parcel bounded by Washington Avenue, Front Street and Federal Street.
8. Parcel bounded by Front Street and Washington Avenue.
9. Parcel bounded by Front Street, between Delancey and Fitzwater Streets.
10. Parcel bounded by Front Street, Market Street and Chestnut Street.

THIRD-PARTY AGREEMENTS

1. Philadelphia Vietnam Veterans Memorial Fund, Inc. -- I-95 from Chestnut Street to Delancey Street.
2. Delaware Waterfront Associates -- Delaware Avenue and Race Street.
3. Robideaues Express -- I-95 -- Oregon Avenue to Swanson Street.
4. L.J. Palladinetti, T/A Bell Beverage -- East of Front Street and South of Oregon Avenue.

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT ("Sublease" or "Sublease I") is made as of the day of _____, 1990 by and between the City of Philadelphia ("City") and the Philadelphia Authority for Industrial Development ("PAID").

The background of this Sublease is as follows:

(A) The Commonwealth of Pennsylvania ("Commonwealth"), pursuant to a Joint-Use Lease Agreement ("Lease") between the Commonwealth and the City dated the _____ day of _____, 1990, has leased to the City certain parcels of real property within the Commonwealth's right-of-way for I-95 between the Walt Whitman Bridge and the Ben Franklin Bridge in the City of Philadelphia ("Leased Premises") which parcels are not needed for the free movement of traffic. A copy of the Lease between the City and the Commonwealth is attached hereto as Exhibit "A" and the Lease and its exhibits are incorporated herein by reference.

(B) For the purposes of maintaining the Leased Premises and for marketing the Leased Premises for leasing purposes, the City and the Commonwealth have cooperated in the creation of the Interstate Land Management Corporation ("ILMC").

(C) In order to accomplish the purposes of ILMC it is necessary for the City to enter into this Sublease, whereby the City will sublease to PAID the Leased Premises that are the subject of the Lease between the City and the Commonwealth.

(D) PAID and ILMC will simultaneously enter into a Second-Tier Sublease ("Sublease II") pursuant to which ILMC shall assume the management and maintenance responsibilities of the City under the Lease. Sublease II shall incorporate by reference all relevant provisions of the Lease.

Therefore, in consideration of the foregoing premises and the mutual promises hereinafter set forth, the parties hereto agree, with the intention of being legally bound, as follows:

1. City does hereby sublease to PAID the Leased Premises that are the subject of the Lease between the City and the Commonwealth. A map depicting the Leased Premises is attached hereto as Exhibit "B".

2. Subject to the rights of the City and PAID to terminate Sublease I as hereinafter provided, the term of Sublease I is four (4) years commencing on the day of , 1990 ("Commencement Date") and ending on the day of , 1994 ("Term"). If both parties agree, this Sublease may be renewed for four additional four-year terms.

3. The parties agree that PAID will simultaneously sublease the Leased Premises to ILMC so that ILMC may sublease portions of the Leased Premises to private parties ("Private Sublessees"). All subleases with Private Sublessees ("Private Subleases") shall be in accordance with the Lease and shall be in the form provided by Exhibit "J" of the Lease.

4. (a) It is understood and agreed by the parties hereto that PAID shall pay to City the flat rent of one dollar (\$1.00) for each year of the term payable on the Commencement Date of Sublease I and on each anniversary of the Commencement Date.

(b) In the event that there are Net Revenues in any given Fiscal Year, as the term "Net Revenues" is defined in paragraph 6.06 of the Lease, PAID shall pay to City as additional rent for the Leased Premises an amount equal to 100% of the Net Revenues for that fiscal year.

(c) Payments of rent and additional rent shall be made to the City at the office of the Commissioner of Public Property, 1020 Municipal Services Building, Philadelphia, PA 19102.

5. (a) PAID shall require ILMC to pay or cause to be paid, before delinquency, all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, or payments in lieu thereof, whether general or special, ordinary or extraordinary, together with interest and penalties, which are levied upon or assessed against all or any part of the Leased Premises or the use or occupation of all or any part of the Leased Premises. Specifically, PAID agrees to require ILMC to make all payments in lieu of taxes which may be levied on the Leased Premises during the term of this agreement as provided in Section 2002(c) of the Administrative Code of 1929, as amended, 71 P.S. §512(c), and 67 Pa. Code §495.9.

(b) PAID agrees to require ILMC to pay or appeal all such foregoing taxes, assessments and charges within thirty days after the date of delinquency thereof and give written notice of each payment or appeal to the City within ten (10) days after such payment is made.

(c) PAID shall require ILMC to pay or cause to be paid, before delinquency, all charges for utility services to the Leased Premises, including but not limited to charges for water, gas, light, heat, telephone, electricity and communications services. Neither City nor PAID shall be responsible for the installation of any utility facilities or meters required to furnish utility services to all or any part of the Leased Premises.

(d) PAID agrees to require ILMC pay or appeal all such foregoing utility charges within thirty (30) days after the date of delinquency thereof and give written notice of each payment or appeal to City within ten (10) days after such payment or appeal is made.

6. The installation or operation on the Leased Premises of a gasoline service station shall not be permitted, nor shall vehicles used or designed for the transportation of gasoline or petroleum products be permitted on the Leased Premises.

7. The Leased Premises shall not be used for the manufacture or storage of flammable, explosive or hazardous material or for any occupation which is deemed by City, or by Commonwealth to be a hazard to highway or non-highway users.

8. Use of airspace beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearance for the construction, operation, maintenance, ventilation and safety of the highway facility as well as for the adoption of safety precautions and measures necessary to fully reduce the possibility of injury to users of the highway premises. All determinations regarding this paragraph shall be made solely by the Commonwealth.

9. No vending of any kind or character shall be conducted, permitted or allowed upon the Leased Premises.

10. No illegal activity shall be permitted on the Leased Premises. All persons authorized to use the Leased Premises shall comply with all statutes, laws, ordinances and rules of the federal, state and local governments having jurisdiction over the Leased Premises.

11. Signs and displays may be erected on improvements occupying the Leased Premises restricted, however, to those indicating ownership and type of on-premises activities and shall be subject to regulation by the City or Commonwealth with respect to number, size, location and design. No signs shall be attached to or painted on the elevated structure of the highway and all signs shall be subject to approval of the City and Commonwealth.

12. All improvements on the Leased Premises shall be designed and constructed in such a manner as not to interfere in any way with safety of highway use or to expose any member of the public, whether or not said member of the public is using the highway, to any hazardous or unsafe condition. All improvements shall be designed and constructed in such a manner as to permit access to

the highway for the purpose of inspection, maintenance and reconstruction, when necessary. Any permanent improvements on the Leased Premises must have the prior written approval of the Commonwealth as set forth in Article 10 of the Lease between the City and the Commonwealth.

13. (a) PAID shall require ILMC, at its sole expense and risk, to maintain or cause to be maintained all of the Leased Premises in a safe and sanitary condition, and shall not do or permit any act or practice injurious to the Leased Premises or the adjacent highway.

(b) PAID shall require ILMC, throughout the term of this Sublease Agreement, to maintain and keep the Leased Premises from waste and nuisance, and to deliver up the Leased Premises in a clean and sanitary condition, reasonable wear and tear excepted. In the event Leased Premises are not reasonably maintained, City shall have the right, but not the obligation, to cause repairs or corrections to be made, and PAID shall require ILMC to reimburse the City for the cost of any such repairs or corrections.

(c) The City, the Commonwealth, PAID and their respective officers, agents and employees shall be permitted to enter onto and upon the Leased Premises at all reasonable times for the purpose of inspection of the same or doing of any and all acts necessary or proper on said premises in connection with the protection, maintenance, repair, restoration and operation of the abutting highway structures and their appurtenances.

14. PAID shall require ILMC to maintain or cause to be maintained the following insurance during the term of this Sublease: (a) public liability insurance, in a company or companies to be approved by City and Commonwealth, to protect against any liability to the public incident to the use of, or resulting from injury to, or death of, any person occurring in, or about, the premises, in the amount of not less than One Million Dollars (\$1,000,000.00) to indemnify

the claim of one person, and in the amount of not less than One Million Dollars (\$1,000,000.00) against the claims of two or more persons resulting from any one accident; and (b) property damage or other insurance, in a company or companies to be approved by the City and the Commonwealth, to protect PAID, the City and the Commonwealth from any and every cause occurring in, or about, the premises, including any and all liability of PAID, the City and the Commonwealth from damage to vehicles parked on the premises in the amount of not less than One Million Dollars (\$1,000,000.00). Said policies shall inure to the contingent liabilities, if any, of PAID, the City and the Commonwealth and shall obligate the insurance carriers to notify PAID, the City and the Commonwealth, in writing, not less than fifteen (15) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of PAID, the City, and the Commonwealth. If the Leased Premises are subleased to a Private Sublessee, the Private Sublessee shall be obligated to obtain the aforesaid insurance. The Private Sublessee shall furnish to PAID, the City and the Commonwealth a certified copy of each and every such policy within not more than ten (10) days after the effective date of the policy. If the Private Sublessee does not keep such insurance in full force and effect, PAID, the City or the Commonwealth may take out insurance and pay the premiums thereon, and the repayment thereof shall be chargeable to the Private Sublessee.

15. PAID shall require that ILMC not transfer or assign this Sublease or any part thereof nor sublet or subcontract the use of the Leased Premises or any part thereof without the prior written consent of the City and of PAID.

16. The City, the Commonwealth and PAID specifically reserve the right to entry by any authorized officer, engineer, employee, contractor, or agent of

the City the Commonwealth or PAID for the purpose of inspecting the Leased Premises, or the doing of any and all acts necessary or proper on the Leased Premises in connection with the protection, maintenance, painting and operation of the highway structures and its appurtenances. The City and the Commonwealth reserve the further right to immediate entry upon the Leased Premises and to take immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said highway structures, in which event the terms of this Sublease shall be extended for a period equal to the emergency occupancy by the City or the Commonwealth, and during said period PAID shall be relieved from the performance of all conditions or covenants specified herein.

17. This Sublease shall not be recorded.

18. PAID shall at all times during the term of this Sublease peaceably and quietly have, hold and enjoy the Leased Premises, without suit, trouble, or hindrance from the City or the Commonwealth provided, however, that if PAID shall not perform and fulfill each and every one of the conditions and covenants herein contained to be performed by PAID, or if PAID discontinues use of the Leased Premises for more than any continuous sixty (60) day period, or if PAID attempts to transfer or assign these premises to any entity other than ILMC without the written consent of the City, said act or acts of omission or commission may, if not remedied within fifteen (15) days after written notice from the City or the Commonwealth to PAID, at the option of the the City, constitute a forfeiture of all rights under and the termination of this Sublease and the City may assume the position of PAID under this Sublease. The further use of the Leased Premises after such forfeiture by PAID shall be deemed, held and taken as a forcible detainer thereof by PAID and the City may, without notice, re-enter and take possession thereof, and with or without force, and with or without

Leased Premises after such forfeiture by PAID shall be deemed, held and taken as a forcible detainer thereof by PAID and the City may, without notice, re-enter and take possession thereof, and with or without force, and with or without legal process.

18.1. The liability of PAID under this Agreement shall be enforceable solely out of its interest in the ILMC parcels and there shall be no other recourse against any other assets now owned by or hereafter acquired by PAID.

19. In the event of the termination of this Sublease for any reason, PAID will peaceably and quietly leave, surrender, and yield up to the City the Leased Premises with said appurtenances and fixtures in good order, condition, and repair, reasonable use and wear thereof, and damage by earthquake, fire, public calamity, by the elements, by act of God, or by circumstances over which PAID has no control excepted. PAID shall include in Sublease II a provision requiring that any signs or other appurtenances placed on the Leased Premises shall be considered to be the property of ILMC and shall be removed by ILMC upon the termination of the Sublease and the Leased Premises shall be restored to their previous condition within six (6) months after termination, all at the expense of ILMC, provided, that if any such signs or other appurtenances are not so removed after thirty (30) days' written notice from the City or the Commonwealth to ILMC, the City or the Commonwealth may proceed to remove the same and to restore the Leased Premises, and ILMC shall pay the City, upon demand, the reasonable cost and expense to it of such removal and restoration, or the City may, in its absolute discretion, elect to declare the same the property of the City whereupon all right, title and interest of ILMC therein shall forthwith terminate without the right of the City to compensate for the depreciated value of improvements installed or constructed by the City. In the event of the termination of this Sublease or the Lease between the City and the Commonwealth

for any reason, PAID waives any right of compensation for the value of any improvements made to the property, appurtenances, or fixtures placed thereon.

20. Time is of the essence of each and all of the terms and provisions of this Sublease.

21. Notwithstanding any thing herein contained to the contrary, this Sublease may be terminated, and the provisions of this Sublease may be altered, changed, or amended by mutual written consent of the parties hereto.

22. In the event of the termination of the Lease, this Sublease shall automatically terminate. This Sublease may be terminated at the end of the Term by either party giving ninety (90) days' written notice to the other party.

23. PAID shall require ILMC to obtain or cause to be obtained permission, in writing, from the City and the Commonwealth to install any permanent improvement, including lighting facilities, to the Leased Premises. All permanent improvements shall be installed in accordance with plans to be submitted for prior approval to the City and the Commonwealth and shall be installed at no expense to the Commonwealth or the City.

24. The terms and provisions of this Sublease shall extend to and be binding upon and inure to the benefits of any approved successor or assignee of PAID.

25. (a) This Lease is entered into pursuant to the terms of the Philadelphia Home Rule Charter and in its performance, PAID shall not discriminate nor permit discrimination against any person because of race, color, religion, national origin or sex. In the event of such discrimination, the City may terminate this Lease.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, PAID agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary pri-

vate organization, insofar as such participation confers an employment advantage of constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Lease entitling the City to all rights and remedies provided in this Agreement or otherwise available in law or equity.

(c) PAID agrees to include the immediately preceding paragraph, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Agreement.

(d) PAID further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Lease entitling the City to all rights and remedies provided herein or otherwise available in law or equity.

(e) PAID agrees to comply with the provisions of Exhibit K-1 (Commonwealth Nondiscrimination Clause) and Exhibit K-2 (Federal Nondiscrimination and Equal Opportunity Clause) of the Lease.

26. This Sublease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

27. All notices under the terms of this Sublease shall be in writing and shall be sent by registered or certified mail, postage prepaid. If such notice is given by City, it shall be submitted to PAID, 22nd Floor, 123 South Broad Street, Philadelphia, PA 19107 and if given by PAID, such notice shall be submitted to City of Philadelphia, Department of Public Property, 1020 Municipal

Services Bldg., Philadelphia, PA 19102. Copies of all notices shall be provided to the Commonwealth in care of Secretary of Transportation, 1200 Transportation & Safety Building, Harrisburg, PA 17120.

28. This Sublease set forth all the promises, agreements, conditions and understandings between PAID and the City relating to this matter, except as specifically excepted in this Sublease. There are no promises, agreements, conditions or understandings, either oral or written, between PAID and the City other than those set forth in this and associated agreements.

29. If any term, covenant or condition of this Sublease or the application thereof to any party or circumstance is held to be invalid or unenforceable, the remainder of this Sublease, or the application of such term, covenant or condition to parties or circumstances other than those to which the Sublease was held invalid or unenforceable, shall not be affected by the holding of invalidity or unenforceability. Each remaining term, covenant or condition of this Sublease shall be valid and be enforced to the fullest extent permitted by law.

30. Any agreement, covenant or condition set forth in this Sublease which, by its nature, would reasonably be expected to be performed after the expiration or earlier termination of this Sublease shall survive and be enforceable after the expiration or earlier termination of this Sublease. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Sublease, shall survive any termination of this Sublease.

31. Performance of all of the terms, covenants and conditions of this Sublease shall be independent of the performance of all and every other term, covenant and condition of this Sublease.

32. The City and PAID agree that they will comply with the Commonwealth's integrity provisions as set forth in Exhibit "L" of the Lease.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused these presents to be signed, sealed and delivered by their proper officials, pursuant to due and legal action authorizing the same to be done the day, month and year first above written.

ATTEST:

CITY OF PHILADELPHIA

TITLE: _____

TITLE: _____

CORPORATE SEAL:

PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT

BY: _____

ATTEST: _____

SUBLEASE II AGREEMENT

THIS SUBLEASE AGREEMENT ("Sublease" or "Sublease II") is made as of the day of , 1989 by and between the Philadelphia Authority for Industrial Development ("PAID") and the Interstate Land Management Corporation ("ILMC").

The background of this Sublease is as follows:

(A) The Commonwealth of Pennsylvania ("Commonwealth"), pursuant to a Joint-Use Lease Agreement ("Lease") between the Commonwealth and the City of Philadelphia ("City") dated the day of , 1989 has leased to the City certain parcels of real property within the Commonwealth's right-of-way for I-95 between the Walt Whitman Bridge and the Ben Franklin Bridge in the City of Philadelphia ("Leased Premises"), which parcels are not needed for the free movement of traffic. A copy of the Lease between the City and the Commonwealth is attached hereto as Exhibit "A" and the Lease and its exhibits are incorporated herein by reference.

(B) For the purposes of maintaining the Leased Premises and for marketing the Leased Premises for leasing purposes, the City and the Commonwealth have cooperated in the creation of ILMC.

(C) In order to accomplish the purposes of ILMC it is necessary for the City to enter into a Sublease, whereby the City

will sublease to PAID the Leased Premises that are the subject of the Lease between the City and the Commonwealth.

(D) PAID and ILMC will simultaneously enter into this Second-Tier Sublease, Sublease II, pursuant to which ILMC will assume the management and maintenance responsibilities of the City under the Lease.

Therefore, in consideration of the foregoing premises and the mutual promises hereinafter set forth, the parties hereto agree, with the intention of being legally bound, as follows:

1. PAID does hereby sublease to ILMC the Leased Premises that are the subject of the Lease between the City and the Commonwealth. A map depicting the Leased Premises is attached hereto as Exhibit "B".

2. Subject to the rights of PAID to terminate Sublease II as hereinafter provided, the term of Sublease II is four (4) years commencing on the day of , 1989 ("Commencement Date") and ending on the day of , 1993 ("Term"). If both parties agree, this Sublease may be renewed for four additional four-year terms.

3. Pursuant to this Sublease II, ILMC may sublease portions of the Leased Premises to private parties ("Private Sublessees"). All subleases with Private Sublessees ("Private Subleases") shall

be in accordance with the Lease and shall be in the form provided by Exhibit "J" of the Lease.

4. (a) It is understood and agreed by the parties hereto that ILMC shall pay to PAID the flat rent of one dollar (\$1.00) for each year of the term, payable on the Commencement Date of Sublease II and on each anniversary of the Commencement Date.

(b) In the event that there are Net Revenues in any given Fiscal Year, as the term "Net Revenues" is defined in paragraph 6.06 of the Lease, ILMC shall pay to PAID as additional rent for the Leased Premises an amount equal to 100% of the Net Revenues for that fiscal year.

(c) Payments of rent and additional rent shall be made to PAID at its office, Suite 2200, 123 South Broad Street, Philadelphia, PA 19109.

5. (a) ILMC shall pay or cause to be paid, before delinquency, all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, or payments in lieu thereof, whether general or special, ordinary or extraordinary, together with interest and penalties, which are levied upon or assessed against all or any part of the Leased Premises or the use or occupation of all or any part of the Leased Premises. Specifically, ILMC shall make all payments in lieu of taxes which may be levied on the Leased Premises during the term of

this agreement as provided in Section 2002(c) of the Administrative Code of 1929, as amended, 71 P.S. Section 512(c), and 67 Pa. Code Section 495.9.

(b) ILMC shall pay or appeal all such foregoing taxes, assessments and charges within thirty days after the date of delinquency thereof and give written notice of each payment or appeal to PAID within seven (7) days after such payment is made.

(c) ILMC shall pay or cause to be paid, before delinquency, all charges for utility services to the Leased Premises, including but not limited to charges for water, gas, light, heat, telephone, electricity and communications services. Neither City nor PAID shall be responsible for the installation of any utility facilities or meters required to furnish utility services to all or any part of the Leased Premises.

(d) ILMC shall pay or appeal all such foregoing utility charges within thirty (30) days after the date of delinquency thereof and give written notice of each payment or appeal to City within ten (10) days after such payment or appeal is made.

6. The installation or operation on the Leased Premises of a gasoline service station shall not be permitted, nor shall vehicles used or designed for the transportation of gasoline or petroleum products be permitted on the Leased Premises.

7. The Leased Premises shall not be used for the manufacture or storage of flammable, explosive or hazardous material or for any occupation which is deemed by City, or by Commonwealth to be a hazard to highway or non-highway users.

8. Use of airspace beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearance for the construction, operation, maintenance, ventilation and safety of the highway facility as well as for the adoption of safety precautions and measures necessary to fully reduce the possibility of injury to users of the highway premises. All determinations regarding this paragraph shall be made solely by the Commonwealth.

9. No vending of any kind or character shall be conducted, permitted, or allowed upon the Leased Premises.

10. No illegal activity shall be permitted on the Leased Premises. All persons authorized to use the Leased Premises shall comply with all statutes, laws, ordinances and rules of the federal, state and local governments having jurisdiction over the Leased Premises.

11. Signs and displays may be erected on improvements occupying the Leased Premises, restricted, however, to those indicating ownership and type of on-premises activities and shall be subject to regulation by the City or Commonwealth with respect

to number, size, location and design. No signs shall be attached to or painted on the elevated structure of the highway and all signs shall be subject to approval of the City and Commonwealth.

12. All improvements on the Leased Premises shall be designed and constructed in such a manner as not to interfere in any way with safety of highway use or to expose any member of the public, whether or not said member of the public is using the highway, to any hazardous or unsafe condition. All improvements shall be designed and constructed in such a manner as to permit access to the highway for the purpose of inspection, maintenance and reconstruction, when necessary. Any permanent improvements on the Leased Premises must have the prior written approval of the Commonwealth as set forth in Article 10 of the Lease between the City and the Commonwealth.

13. (a) ILMC shall, at its sole expense and risk, maintain or cause to be maintained all of the Leased Premises in a safe and sanitary condition, and shall not do or permit any act or practice injurious to the Leased Premises or the adjacent highway.

(b) Throughout the term of this Sublease Agreement, ILMC shall maintain and keep the Leased Premises from waste and nuisance, and deliver up the Leased Premises in a clean and sanitary condition, reasonable wear and tear excepted. In the event Leased Premises are not reasonably maintained, City shall have the right, but not the obligation, to cause repairs or

corrections to be made, and ILMC shall reimburse the City for the cost of any such repairs or corrections.

(c) The City, the Commonwealth, PAID and their respective officers, agents and employees shall be permitted to enter onto and upon the Leased Premises at all reasonable times for the purpose of inspection of the same or doing of any and all acts necessary or proper on said premises in connection with the protection, maintenance, repair, restoration and operation of the abutting highway structures and their appurtenances.

14. ILMC shall maintain or cause to be maintained the following insurance during the term of this Sublease: (a) public liability insurance, in a company or companies to be approved by City and Commonwealth, to protect against any liability to the public incident to the use of, or resulting from injury to, or death of, any person occurring in, or about, the premises, in the amount of not less than One Million Dollars (\$1,000,000.00) to indemnify the claim of one person, and in the amount of not less than One Million Dollars (\$1,000,000.00) against the claims of two or more persons resulting from any one accident; and (b) property damage or other insurance, in a company or companies to be approved by the City and the Commonwealth, to protect PAID, the City and the Commonwealth from any and every cause occurring in, or about, the premises, including any and all liability of PAID, the City and the Commonwealth from damage to vehicles parked on the premises in the amount of not less than One Million Dollars (\$1,000,000.00). Said

policies shall inure to the contingent liabilities, if any, of PAID, the City and the Commonwealth and shall obligate the insurance carriers to notify PAID, the City and the Commonwealth, in writing, not less than fifteen (15) days prior to the cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of PAID, the City, and the Commonwealth. If the Leased Premises are subleased to a Private Sublessee, the Private Sublessee shall be obligated to obtain the aforesaid insurance. The Private Sublessee shall furnish to PAID, the City and the Commonwealth a certified copy of each and every such policy within not more than ten (10) days after the effective date of the policy. If the Private Sublessee does not keep such insurance in full force and effect, PAID, the City or the Commonwealth may take out insurance and pay the premiums thereon, and the repayment thereof shall be chargeable to the Private Sublessee.

15. ILMC shall not transfer or assign this Sublease or any part thereof nor sublet or subcontract the use of the Leased Premises or any part thereof without the prior written consent of the City and of PAID.

16. The City, the Commonwealth and PAID specifically reserve the right to entry by any authorized officer, engineer, employee,

contractor, or agent of the City, the Commonwealth or PAID for the purpose of inspecting the Leased Premises, or the doing of any and all acts necessary or proper on the Leased Premises in connection with the protection, maintenance, painting and operation of the highway structures and its appurtenances. The City and the Commonwealth reserve the further right to immediate entry upon the Leased Premises and to take immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said highway structures, in which event the terms of this Sublease shall be extended for a period equal to the emergency occupancy by the City or the Commonwealth, and during said period ILMC shall be relieved from the performance of all conditions or covenants specified herein.

17. This Sublease shall not be recorded.

18. ILMC shall at all times during the term of this Sublease peaceably and quietly have, hold and enjoy the Leased Premises, without suit, trouble, or hindrance from PAID, the City or the Commonwealth, provided, however, that if ILMC shall not perform and fulfill each and every one of the conditions and covenants herein contained to be performed by ILMC, or if ILMC discontinues use of the Leased Premises for more than any continuous sixty (60) day period, or if ILMC attempts to transfer or assign these premises to any entity other than a Private Sublessee in conformance with the method set forth in the Lease, said act or acts of omission or

commission may, if not remedied within fifteen (15) days after written notice from PAID, at the option of PAID, constitute a forfeiture of all rights under and the termination of this Sublease and PAID may assume the position of ILMC under this Sublease. The further use of the Leased Premises after such forfeiture by ILMC shall be deemed, held and taken as a forcible detainer thereof by ILMC and PAID may, without notice, re-enter and take possession thereof, and with or without force, and with or without legal process. If any suit be brought by PAID against ILMC for the breach of any condition or covenant herein contained, or any summary action be brought by PAID for the forfeiture of this Sublease, or to recover possession of the Leased Premises, ILMC agrees to pay reasonable attorney's fees and costs for commencing and prosecuting said action which shall be ascertained and fixed by the Court.

19. In the event of the termination of this Sublease for any reason, ILMC will peaceably and quietly leave, surrender, and yield up to PAID the Leased Premises with said appurtenances and fixtures in good order, condition, and repair, reasonable use and wear thereof, and damage by earthquake, fire, public calamity, by the elements, by act of God, or by circumstances over which ILMC has no control excepted. Any signs or other appurtenances placed on the Leased Premises shall be considered to be the property of ILMC and shall be removed by ILMC upon the termination of this Sublease and the Leased Premises shall be restored to their previous condition within six (6) months after termination, all at the expense of

ILMC, provided, that if any such signs or other appurtenances are not so removed after thirty (30) days' written notice from the City or the Commonwealth to ILMC, the City or the Commonwealth may proceed to remove the same and to restore the Leased Premises, and ILMC shall pay the City, upon demand, the reasonable cost and expense to it of such removal and restoration, or the City may, in its absolute discretion, elect to declare the same the property of the City whereupon all right, title and interest of ILMC therein shall forthwith terminate without the right of the City to compensate for the depreciated value of improvements installed or constructed by the City. In the event of the termination of this Sublease or the Lease between the City and the Commonwealth for any reason, ILMC waives any right of compensation for the value of any improvements made to the property, appurtenances, or fixtures placed thereon.

20. Time is of the essence of each and all of the terms and provisions of this Sublease.

21. Notwithstanding anything herein contained to the contrary, this Sublease may be terminated, and the provisions of this Sublease may be altered, changed, or amended by mutual written consent of the parties hereto.

22. In the event of the termination of the Lease, this Sublease shall automatically terminate. This Sublease may be

terminated at the end of the Term by either party giving ninety (90) days' written notice to the other party.

23. ILMC shall obtain or cause to be obtained permission, in writing, from the City and the Commonwealth to install any permanent improvement, including lighting facilities, to the Leased Premises. All permanent improvements shall be installed in accordance with plans to be submitted for prior approval to the City and the Commonwealth and shall be installed at no expense to the Commonwealth, the City, or PAID.

24. The terms and provisions of this Sublease shall extend to and be binding upon and inure to the benefits of any approved successor or assignee of ILMC.

25. (a) ILMC shall not discriminate nor permit discrimination against any person because of race, color, religion, national origin or sex. In the event of such discrimination, PAID may terminate this Lease.

(b) In accordance with Chapter 17-400 of the Philadelphia Code, ILMC agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of

employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Lease entitling PAID to all rights and remedies provided in this Agreement or otherwise available in law or equity.

(c) ILMC agrees to include the immediately preceding paragraph with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Agreement.

(d) ILMC further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial beach of this Lease entitling PAID to all rights and remedies provided herein or otherwise available in law or equity.

(e) ILMC agrees to comply with the provisions of Exhibit K-1 (Commonwealth Nondiscrimination Clause) and Exhibit K-2 (Federal Nondiscrimination and Equal Opportunity Clause) of the Lease.

26. This Sublease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

27. The liability of PAID under this Agreement shall be enforceable solely out of its interest in the Leased Premises and there shall be no other recourse against any other assets now owned by or hereafter acquired by PAID.

28. All notices under the terms of this Sublease shall be in writing and shall be sent by registered or certified mail, postage prepaid. If such notice is given by PAID, it shall be submitted to ILMC at _____, and if given by ILMC, such notice shall be submitted to PAID at 123 South Broad Street, 22nd Floor, Philadelphia, PA 19109. Copies of all notices shall be provided to the City at Department of Public Property, 1020 Municipal Services Building, Philadelphia, PA 19102 and to the Commonwealth in care of Secretary of Transportation, 1200 Transportation and Safety Building, Harrisburg, PA 17120.

29. This Sublease sets forth all the promises, agreement, conditions and understandings between PAID and the ILMC relating to this matter, except as specifically excepted in this Sublease. There are no promises, agreements, conditions or understandings, either oral or written, between PAID and ILMC other than those set forth in this and associated agreements.

30. If any term, covenant or condition of this Sublease or the application thereof to any party or circumstance is held to be invalid or unenforceable, the remainder of this Sublease, or the application of such term, covenant or condition to parties or

circumstances other than those to which the Sublease was held invalid or unenforceable, shall not be affected by the holding of invalidity or unenforceability. Each remaining term, covenant or condition of this Sublease shall be valid and be enforced to the fullest extent permitted by law.

31. Any agreement, covenant or condition set forth in this Sublease which, by its nature, would reasonably be expected to be performed after the expiration or earlier termination of this Sublease shall survive and be enforceable after the expiration or earlier termination of this Sublease. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Sublease, shall survive any termination of this Sublease.

32. Performance of all of the terms, covenants and conditions of this Sublease shall be independent of the performance of all and every other term, covenant and condition of this Sublease.

33. PAID and ILMC agree that they will comply with the Commonwealth's integrity provisions as set forth in Exhibit "L" of the Lease.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused these presents to be signed, sealed and delivered by their proper officials, pursuant to due and legal action authorizing the same to be done the day, month and year first above written.

PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT

CORPORATE SEAL:

ATTEST: _____

TITLE: _____

INTERSTATE LAND MANAGEMENT CORP.

CORPORATE SEAL:

ATTEST: _____

TITLE: _____

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT ("Agreement") is made as of the day of , 1990, by and among THE COMMONWEALTH OF PENNSYLVANIA, acting through the Department of Transportation ("Commonwealth"), THE CITY OF PHILADELPHIA ("City"), and THE PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT ("PAID").

The Background of this Agreement is as follows:

A. The Commonwealth, pursuant to a Joint-Use Lease Agreement ("Lease") between the Commonwealth and the City dated the day of , 1990, has leased to the City certain parcels of real property within the Commonwealth's right-of-way for I-95 between the Walt Whitman Bridge and the Ben Franklin Bridge in the City of Philadelphia ("Leased Premises") which parcels are not needed for the free movement of traffic. A copy of the Lease between the City and the Commonwealth is attached hereto as Exhibit "A" and is incorporated herein by reference.

B. For the purposes of maintaining the Leased Premises and for marketing the Leased Premises for leasing purposes, the City and the Commonwealth have cooperated in the creation of the Interstate Land Management Corporation ("ILMC").

C. In order to accomplish the purposes of ILMC, the City and PAID have entered into a Sublease Agreement ("Sublease I") whereby the City has sublet to PAID the Leased Premises that are the subject of the Lease.

D. To further accomplish the purposes of ILMC, PAID and ILMC have entered into a Second-Tier Sublease ("Sublease II") pursuant to which ILMC will

assume the management and maintenance responsibilities of the City pursuant to the Lease.

E. To further accomplish the purposes of ILMC, it is necessary for PAID, the City, and the Commonwealth to enter into this Agreement pursuant to which the City and the Commonwealth will contribute funds, as necessary, to PAID and PAID will in turn contribute funds to the operations of ILMC.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises hereinafter set forth, and with the intention of being legally bound hereby, the parties hereto agree as follows:

1. Subject to appropriations, the Commonwealth shall make the following annual cash contributions to PAID for the operation of ILMC:

Fiscal Year 1990	\$200,000.00
Fiscal Year 1991	\$200,000.00
Fiscal Year 1992	\$200,000.00
Fiscal Year 1993	\$200,000.00
Fiscal Year 1994	\$200,000.00
Fiscal Year 1995	\$200,000.00
Fiscal Year 1996	\$200,000.00
Fiscal Year 1997	\$200,000.00
Fiscal Year 1998	\$150,000.00
Fiscal Year 1999	\$ 50,000.00
Fiscal Year 2000	- 0 -

2. Subject to appropriations, the City shall make the following annual cash contributions to PAID for the operations of ILMC:

Fiscal Year 1990	\$250,000.00
Fiscal Year 1991	\$450,000.00
Fiscal Year 1992	\$400,000.00

Fiscal Year 1993	\$300,000.00
Fiscal Year 1994	\$200,000.00
Fiscal Year 1995	\$100,000.00
Fiscal Year 1996	- 0 -
Fiscal Year 1997	- 0 -
Fiscal Year 1998	- 0 -
Fiscal Year 1999	- 0 -
Fiscal Year 2000	- 0 -

3. Subject to appropriations, the City shall make the following annual in-kind contributions to PAID for the operations of ILMC:

Fiscal Year 1990	\$200,000.00
Fiscal Year 1991	\$200,000.00
Fiscal Year 1992	\$200,000.00
Fiscal Year 1993	\$200,000.00
Fiscal Year 1994	\$200,000.00
Fiscal Year 1995	\$200,000.00
Fiscal Year 1996	\$200,000.00
Fiscal Year 1997	\$200,000.00
Fiscal Year 1998	\$200,000.00
Fiscal Year 1999	\$200,000.00
Fiscal Year 2000	\$250,000.00

4. For the purpose of this Agreement, the term "Fiscal Year" shall refer to the twelve-month period of time beginning on July 1st of a particular year and ending on June 30th of the following year. For example, Fiscal Year 1990 extends from July 1, 1989 to June 30, 1990.

5. PAID shall enter into Sublease II with ILMC.

6. All of the contributions received by PAID from the Commonwealth and from the City pursuant to this Agreement shall be transferred by PAID to

ILMC except that PAID shall retain from the City's cash contribution in Fiscal Year 1990 only, \$15,000.00 as compensation for administrative expenses incurred.

7. The contributions transferred to ILMC in accordance with paragraph 6 of this Agreement shall be included in the Gross Revenues of ILMC (as defined in the Lease), shall be used solely for the Operating Expenses of ILMC (as defined in the Lease), and shall be used only in accordance with the terms of the Lease.

8. The cash contributions required by this Agreement will be required only to the extent that rental income derived from the Leased Premises is insufficient to meet the Operating Expenses of ILMC.

9. The funds to be contributed by the Commonwealth will be paid from highway maintenance funds allocated to Department of Transportation District 6-0 for Philadelphia County.

10. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

11. This Agreement may not be amended or modified by the parties except in writing and after each party has secured whatever prior approvals that are required to be secured by that party prior to such amendment.

12. The City acknowledges Sublease II and its terms and conditions and consents to PAID executing Sublease II.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized officers as of the date first above written.

APPROVED AS TO LEGALITY AND FORM:

THE COMMONWEALTH OF PENNSYLVANIA

BY: _____
Chief Counsel

BY: _____

BY: _____
Deputy Attorney General

TITLE: _____

ATTEST: _____

TITLE: _____

APPROVED AS TO FORM:

BY: Chief Assistant City Solicitor

THE CITY OF PHILADELPHIA

BY: _____

TITLE: _____

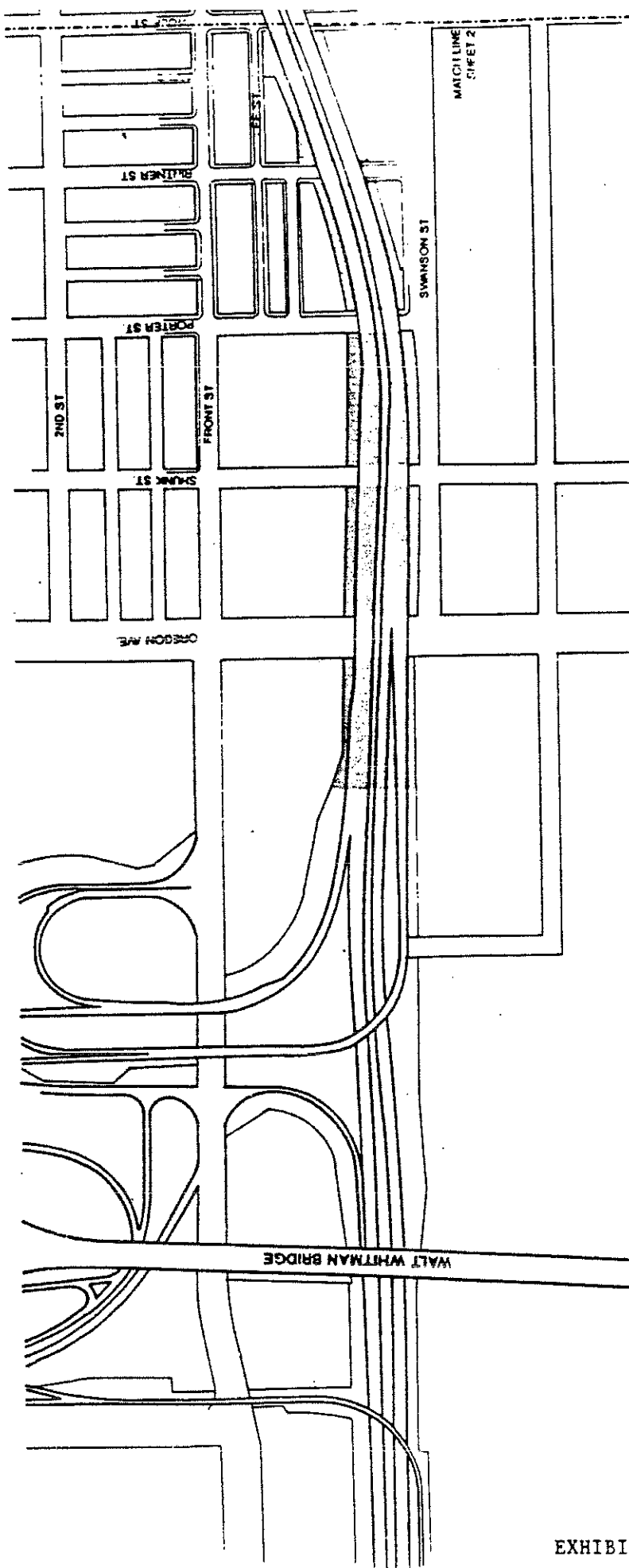
PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT

BY: _____

TITLE: _____

ATTEST: _____

TITLE: _____



INTERSTATE LAND MANAGEMENT CORPORATION
EXHIBIT F
SHEET 1

LEGEND
 LEASED AREA UNDER I-85 VIADUCT AND WITHIN LEGAL R.O.W. LINE FOR LIMITED ACCESS

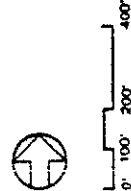
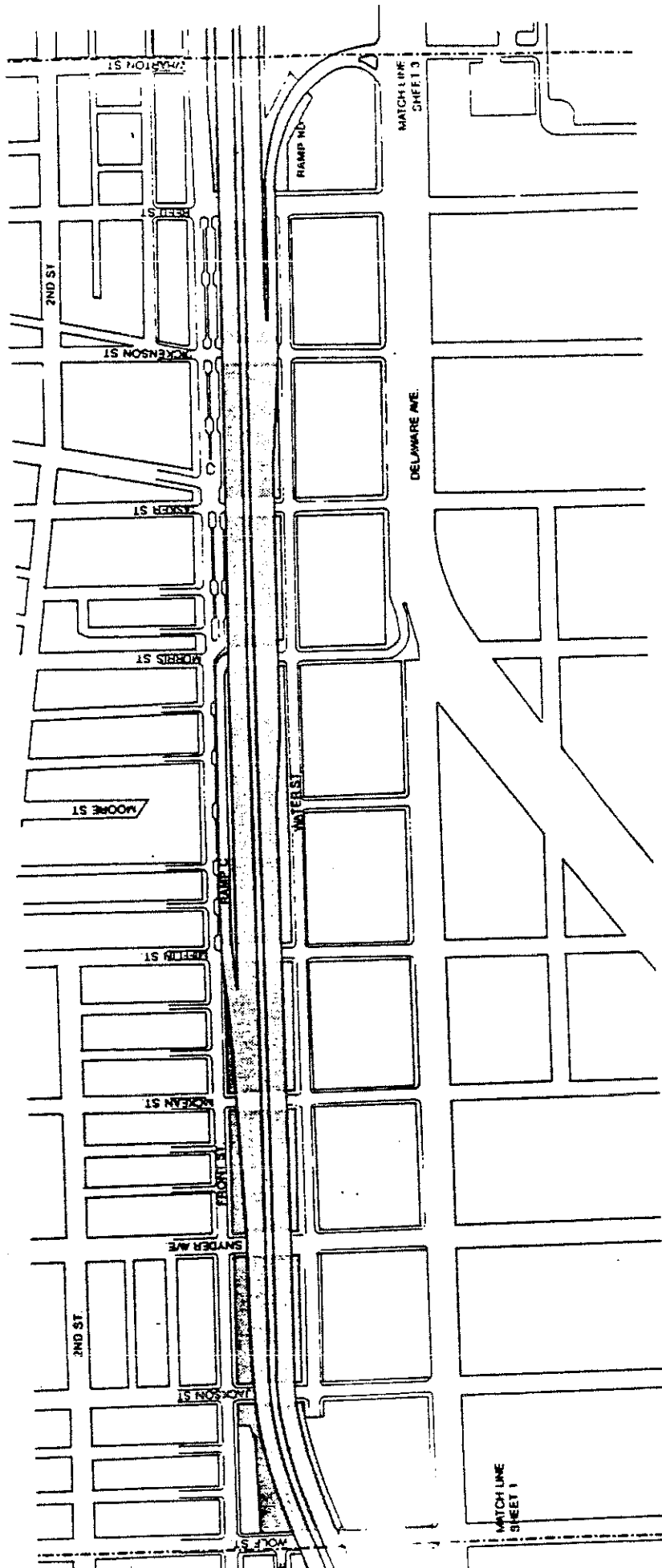


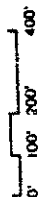
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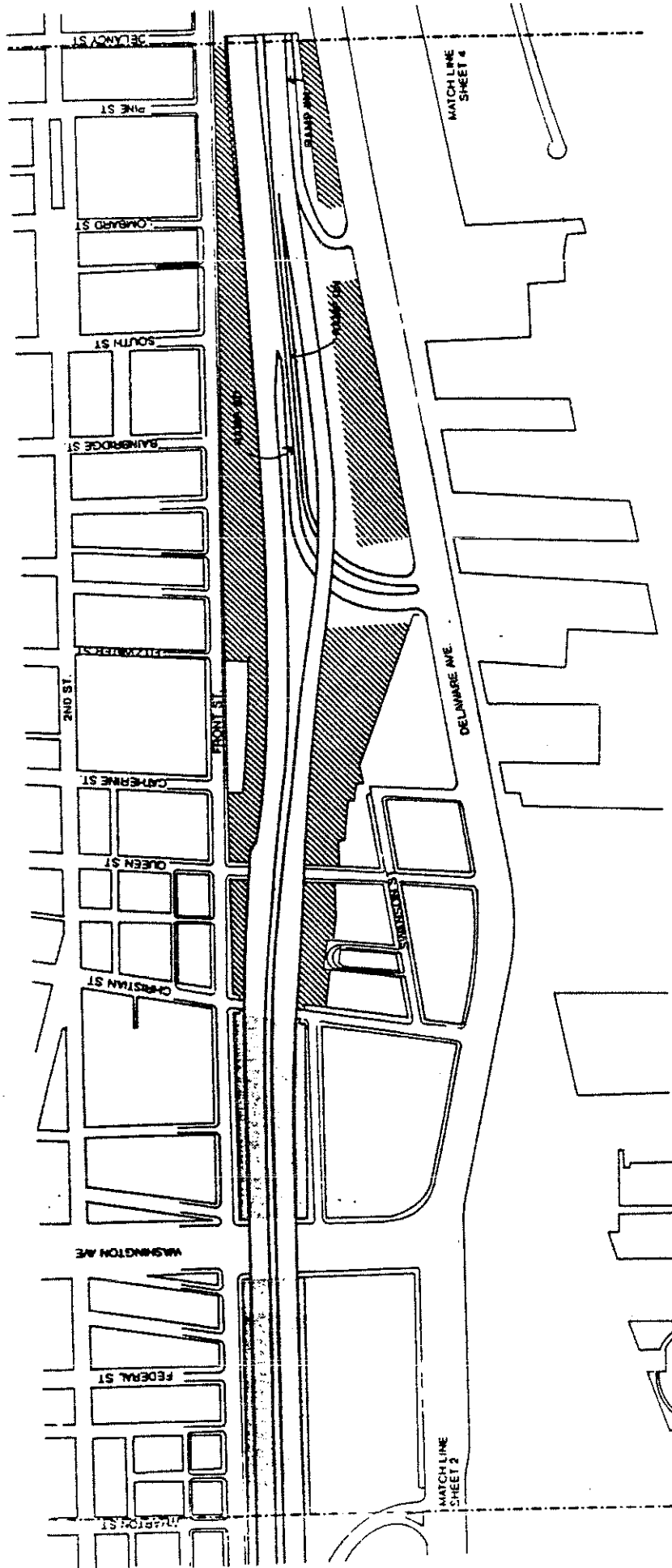


INTERSTATE LAND MANAGEMENT CORPORATION
EXHIBIT F
SHEET 2

LEGEND


-  LEASED AREA UNDER I-95 VIADUCT AND WITHIN
LEGAL R.O.W. LINE FOR LIMITED ACCESS

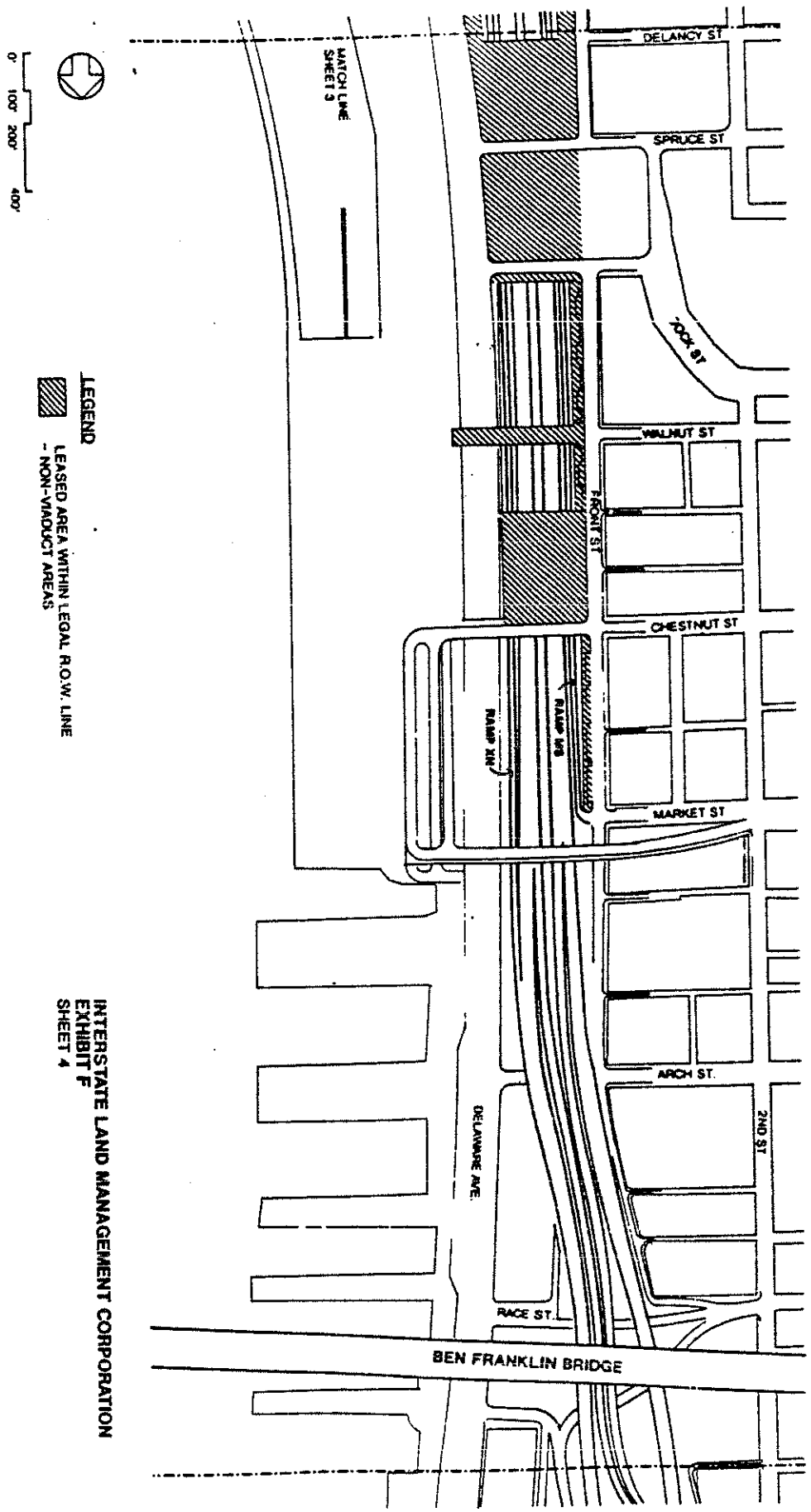




INTERSTATE LAND MANAGEMENT CORPORATION
EXHIBIT F
SHEET 3

LEGEND

-  LEASED AREA UNDER I-95 VIADUCT AND WITHIN LEGAL R.O.W. LINE FOR LIMITED ACCESS
-  LEASED AREA WITHIN LEGAL R.O.W. LINE - NON-VIADUCT AREAS



ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT made as of the
day of _____, 1990, by and between THE COMMONWEALTH OF PENNSYLVANIA,
acting through its Department of Transportation ("Commonwealth") and THE CITY OF
PHILADELPHIA ("City");

W I T N E S S E T H:

WHEREAS, the Commonwealth has under its jurisdiction certain property
acquired for the construction and use of Interstate Route 95 (Legislative Route
1000, Section 795 Alternative) ("I-95"), and Interstate Route 676 (Legislative
Route 67045, Sections 9 to 11) ("Vine Street"), both limited access highways
pursuant to the Act of May 29, 1945, P.L. 1108, 36 P.S. §2391.1 et seq., and
also within the jurisdiction of the Federal Highway Administration; and

WHEREAS, the Commonwealth has determined that certain portions of the
I-95 right of way within the City of Philadelphia between the Walt Whitman
Bridge and the Ben Franklin Bridge, most particularly those areas underneath the
elevated highway, are not needed for the free movement of traffic and have been
leased to the City pursuant to a Joint-Use Lease Agreement ("Lease") dated the
day of _____, 1990 in accordance with Act 1978-37, as
amended, 71 P.S. § 512(c); and

WHEREAS, the Commonwealth has determined that certain portions of the
Vine Street right of way between I-95 and 18th Street in the City of
Philadelphia may not be needed for the free movement of traffic or other
transportation purposes during or after the currently proceeding reconstruction
of Vine Street, and could therefore possibly be available for joint-use leasing
pursuant to Act 1978-37, as amended; and

WHEREAS, the Commonwealth has previously entered into certain leases and other agreements with private and public parties for certain portions of the limited access highways in question ("Third-Party Agreements"). The Third-Party Agreements, a list of which is attached hereto as Exhibit "A", are incorporated herein by reference; and

WHEREAS, the City has proposed that a land management body be established as a means to actively market the leasing of the areas in question not needed for the free movement of traffic and thereby generate funds to maintain those areas not leased, especially the land underneath the elevated I-95. To this end, City and Commonwealth have cooperated in the establishment of the Interstate Land Management Corporation, a Pennsylvania non-profit corporation ("ILMC"); and

WHEREAS, in order to accomplish the purposes of ILMC, it is necessary for the Commonwealth and the City to enter into this Assignment and Assumption Agreement with regard to the Third-Party Agreements whereby the Commonwealth shall assign to the City and the City shall assume from the Commonwealth the rights and obligations of the Commonwealth under the Third-Party Agreements.

NOW, THEREFORE, intending to be legally bound hereby, the Commonwealth and the City agree as follows:

1. The Commonwealth hereby assigns and transfers to the City all of its right, title, and interest in and under the Third-Party Agreements.
2. The City hereby assumes all of the right, title, and interest of the Commonwealth in and under the Third-Party Agreements and the City agrees to perform all the terms, covenants, and conditions of the Third-Party Agreements.
3. The Third-Party Agreements shall be controlled by the terms of the Lease insofar as the terms of the Lease do not conflict with the terms of the Third-Party Agreements.

4. This Assignment and Assumption Agreement shall be binding upon the Commonwealth and the City and their successors, assigns, and sublessors.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be signed by their duly authorized officers as of the date first above written.

APPROVED AS TO LEGALITY AND FORM:

THE COMMONWEALTH OF PENNSYLVANIA

BY: _____
Chief Counsel

BY: _____

BY: _____
Deputy Attorney General

TITLE: _____

ATTEST: _____

TITLE: _____

APPROVED AS TO FORM:

THE CITY OF PHILADELPHIA

BY: _____
Chief Assistant City Solicitor

BY: _____

TITLE: _____

BYLAWS

ARTICLE I

NAME, PURPOSE, POWERS

SECTION 1.1. Name. The name of this Corporation shall be INTERSTATE LAND MANAGEMENT CORPORATION ("Corporation").

SECTION 1.2. Purpose.

(a) The purposes for which the Corporation is formed are to market for leasing purposes certain portions of the I-95 and Vine Street Right-of-Ways in Philadelphia and to perform the "Maintenance Obligations" (as defined below) pursuant to: (1) a Joint-Use Lease Agreement between the Commonwealth of Pennsylvania ("Commonwealth") and the City of Philadelphia ("City") dated _____; (2) a Sublease Agreement between the City and the Philadelphia Authority for Industrial Development ("PAID") dated _____ ("Sublease I"); (3) a Sublease Agreement between PAID and the Corporation dated _____; and (4) a Contribution Agreement among the Commonwealth, the City, and PAID dated _____ ("Sublease II").

(b) "Maintenance Obligations" shall have the meaning set forth in Sublease II.

(c) In performance of the Maintenance Obligations, the Corporation shall comply with all applicable laws, ordinances, rules and regulations of City, State and Federal agencies having jurisdiction over the Leased Premises.

SECTION 1.3 Powers. The Corporation shall have the power to do and engage in any and all lawful activities which are or may be useful, necessary, suitable or proper for the furtherance, accomplishment or attainment of the purposes of the Corporation, including without limitation to enter into, make, perform and carry out contracts of every kind with any person, firm, corporation, private, public or municipal body politic, including, without limitation, for the purchase of materials, equipment, supplies and services and employment of personnel; to establish bank accounts in the name of the Corporation; to prepare budgets and collect contributions from members as provided below in these bylaws.

ARTICLE II

MEMBERSHIP

Section 2.1. Members. The Corporation shall have the following members:

- (1) The Commonwealth of Pennsylvania ("Commonwealth");
- (2) The City of Philadelphia ("City");
- (3) The Philadelphia Chamber of Commerce ("Chamber");
- (4) The Community Council for Interstate Management ("Community Council") (composed of River's Edge Civic Association, Old City Civic Association, Elfreth's Alley Civic Association, Society Hill Civic Association, Queen Village Neighbors Association, Pennsport Civic Association, Whitman Council, Inc., Franklin Bridge North Civic Association, Chinatown Civic Association, and Logan Square Civic Association);
- (5) The State Senator from the 1st State Senate District;

- (6) The State Representative from the 182nd State House District, who shall be a member in odd-numbered years;
- (7) The State Representative from the 184th State House District, who shall be a member in even-number years; and
- (8) The Federal Highway Administration ("F.H.W.A."), which shall be a non-voting member.

ARTICLE III

BOARD OF DIRECTORS

SECTION 3.1. Corporation Business. The business and affairs of the Corporation shall be managed by a Board of Directors composed of nine voting directors (the "Board").

SECTION 3.2. Appointment.

(a) Each member of the Corporation shall have the right to appoint the following number of directors:

- (1) Two directors shall be appointed by the Secretary of Transportation Commonwealth to represent the Commonwealth;
- (2) Two directors shall be appointed by the Mayor of the City to represent the City;
- (3) Two directors shall be appointed by the presidents of the groups comprising the Community Council to represent the Community Council;
- (4) One director shall be appointed by the president of the Chamber to represent the Chamber;
- (5) One director shall be appointed by the State Senator from the 1st State Senatorial District to represent that State Senator;

(6) In odd-numbered years, one director shall be appointed by the State Representative of the 182nd State House District to represent that State Representative;

(7) In even-numbered years, one director shall be appointed by the State Representative of the 184th State House District to represent that State Representative; and

(8) One non-voting director shall be appointed by the Pennsylvania Division Administrator of the F.H.W.A. to represent the F.H.W.A.

(b) Each director shall serve until the appointing member appoints a new director and gives the Secretary of the Corporation written notice of the appointment. A member may appoint a representative to be a director.

(c) Each member may appoint one or more alternate directors for each director it may appoint, and shall give the Secretary of the Corporation written notice of the appointment. In the absence of a director from a meeting of the Board one of his or her alternates may attend the meeting and exercise at the meeting the absent director's power to vote upon such matters as the member or the absent director shall have authorized.

SECTION 3.3. Removal. Each member shall have the right to remove its director or directors at any time, upon written notice to the director and to the Secretary of the Corporation.

SECTION 3.4. Vacancies. If the office of any director shall become vacant, the member entitled to appoint that director shall have the power to fill the vacancy.

SECTION 3.5. Regular Meetings. Regular meetings of the Board shall be held at least four times each year at such times and places as shall be

determined by the Board. At least fifteen (15) days' notice of the time and place so fixed shall be given to each director.

SECTION 3.6. Special Meetings. Special meetings of the Board may be called at any time by the Chairperson of the Board, and shall be called by the Chairperson upon written request to the Chairperson by directors entitled to cast a majority of the votes, specifying the purpose of the meeting. Special meetings shall be at such time and place as may be designated in the notice calling the meeting. At least ten (10) days' written notice of the date, time, place and purpose of any special meeting shall be given to each director.

SECTION 3.7. Quorum.

(a) Except as provided below with respect to approval of the annual budget, changes to the size of the staff of the Corporation, and amendments to the bylaws of the Corporation, the presence of a majority of the directors in office shall be necessary to constitute a quorum for the transaction of business. If there be less than a quorum present, the majority of those present may adjourn the meeting, and they shall cause written notice of each such adjourned meeting to be given to all directors.

(b) Notwithstanding Section 3.7(a), all directors must be present in person or by alternate in order to approve the annual budget, to change the size of the staff of the Corporation, or to amend the bylaws of the Corporation.

(c) However, if a director has been sent proper notices of meetings for approval of any of the items referred to in Section 3.7(b), and that director has failed to appear in person or by an alternate director for two consecutive proposed meetings for such approvals, and notices for a third meeting for those purposes have been properly given under these bylaws, then, even if that director fails to appear in person or by an alternate director for that meeting, that director shall be deemed present for the purpose of constituting a

quorum.

(d) Notwithstanding any other provisions of these bylaws, second or third meeting notices given for the reasons or purposes referred to in Section 3.7(b), need only allow five (5) days between the date of the notice and the date of the proposed meeting.

SECTION 3.8. Chairperson of the Board.

The Corporation shall have a Chairperson of the Board who shall be a director of the corporation and who shall be elected by the majority of the directors. The Chairperson shall preside at all meetings of the Board and shall perform all other duties ordinarily incident to the office of Chairperson of the Board. The Chairperson shall have such other powers and perform such other duties as may be assigned to him or her by the Board from time to time.

SECTION 3.9. Voting.

(a) Each director shall have the right to cast one vote except that the director representing the F.H.W.A. shall not be entitled to vote.

(b) Unless otherwise provided in these bylaws or by law, all matters coming before any meeting of the Board at which a quorum is present shall be determined by a majority of the votes cast. The acts of such a majority shall be the acts of the Board.

(c) The Commonwealth and the City shall each have the power to veto any matter concerning the approval of the annual budget, changes to the size of the staff of the Corporation, or amendments to the bylaws of the Corporation.

SECTION 3.10. Compensation. No director shall receive any compensation for services rendered to or on behalf of the Corporation as director.

SECTION 3.11. Powers.

(a) The Board shall have all the powers and authority granted to the Board by the Nonprofit Corporation Law of 1972, 15 Pa. C.S.A. §7301 et seq., including all powers necessary or appropriate for management of the business and affairs of the Corporation.

(b) Without limiting the generality of the powers conferred by Section 3.11(a), it is expressly declared that the Board shall have the following powers:

- (1) To confer upon any officer or officers of the Corporation the power to choose, remove or suspend any agent or employee.
- (2) To approve and authorize contracts for the Corporation's performance of any activities relating to maintenance of the Leased Premises as defined in the Lease Agreement.
- (3) To purchase and lease personal property for the Corporation.
- (4) To approve and authorize the borrowing of money, the granting of security interests in, the mortgage, pledge and financing of personal property; provided, however, that the Corporation shall have no power to borrow money or deal with its personal property in this way (other than the financing or leasing of necessary maintenance equipment) without the unanimous consent of the Board of Directors.
- (5) If the Board has the consent of all directors it shall have the power to lease, mortgage, pledge or otherwise deal with its real property. In addition, any mortgage of a

leasehold or leasehold property leased from the City may only be made with the consent of the City.

(6) To appoint committees on particular subjects from the directors or from representatives of members of the Corporation.

(7) To appoint a Property Manager to conduct the day-to-day business of the Corporation as directed by the Board.

ARTICLE IV

OFFICERS

SECTION 4.1. Number and Method of Election. The Corporation shall have a President, a Secretary, and a Treasurer who, except as otherwise noted in these bylaws, shall each be elected by the Board for a term of one year. Only directors of the Corporation shall be eligible to be officers of the Corporation.

SECTION 4.2. Duties and Powers. The duties and powers of the officers of the Corporation shall be as follows:

(a) The President shall be responsible for the day-to-day operations of the Corporation and shall have authority to make all necessary expenditures, with the concurrence of the Treasurer, to carry out the rights and obligations in accordance with the Annual Budget and shall have such other powers and perform such other duties as may be assigned to him by the Board from time to time. The President shall have the authority to delegate all or some of the duties of that office to a Property Manager subject to the approval of the Board of Directors.

(b) The Secretary shall keep the minutes of all meetings of the

Board and of the members in books provided for that purpose and shall attend to giving and serving all notices for the Corporation. The Secretary shall have charge of the corporate seal, membership books, and such other books and papers as the Board may direct. The Secretary shall perform all other duties ordinarily incident to the office of Secretary and shall have such other powers and perform such other duties as may be assigned to him by the Board from time to time.

(c) The Treasurer shall be responsible for the maintenance of corporate books of account and corporate bank accounts.

SECTION 4.3. Salaries. No officer of the Corporation shall receive a salary for service as an officer.

SECTION 4.4. Vacancies. The Board shall have the power to fill any vacancies in any office occurring for whatever reason.

SECTION 4.5. Staff. The staff of the Corporation shall consist of a Property Manager who shall have such duties as may be determined by the Board.

ARTICLES V

CONTRIBUTION TO BE ASSIGNED

SECTION 5.1. Contributions. The Corporation shall have the right to receive all contributions paid or obligated to be paid in accordance with the Contribution Agreement dated _____, and executed by PAID, the City and the Commonwealth. The Contribution Agreement is attached to these bylaws as Exhibit "A". The amounts obligated to be paid pursuant to the Contribution Agreement are referred to in these bylaws as "Contributions" of the members. The members' obligatory Contributions shall be debts owed to the Corporation and, subject to the terms of the Contribution Agreement, the Corporation shall be entitled to collect such contributions directly from PAID, the City, and the Commonwealth.

SECTION 5.2. City Agreement. By separate agreement (the "City Agreement") dated _____, and attached to these bylaws as Exhibit "B", the City has agreed to provide PAID with all funds which are necessary for PAID to make its required Contribution as provided in the Contribution Agreement.

ARTICLES VI

ANNUAL BUDGET

SECTION 6.1. Annual Budget.

(a) The Board shall prepare an annual budget for each Fiscal Year, and shall submit that annual budget to the members of the Corporation for their approval at the annual budget meeting of the members in the nature of a special meeting, as provided in Subsection 3.6, or at any other special meeting of members called for that purpose.

(b) The Corporation shall prepare and file with the Commonwealth, by December 1 of each year, a budget for each coming fiscal year setting forth in reasonable detail all projected gross revenues to be received and operating expenses to be incurred by it for such year. The Commonwealth may object in writing to the City with respect to particular items or expenses included in the budget no later than April 1 of such year and the City and the Corporation shall use their best efforts to cooperate with Commonwealth in resolving such objections. In the event the City, the Commonwealth and the Corporation are unable to resolve the objections by May 1 of any year, the Commonwealth shall have the right to submit the dispute no later than May 15 of such year to the American Arbitration Association in Philadelphia, Pennsylvania, or to a mutually agreeable substitute. The Commonwealth and the City hereby agree that the decision of the arbitrators will not be binding and that either party may institute an action in the appropriate jurisdiction to resolve the dispute if the results

of the arbitration process are deemed unacceptable. The costs of the resolution of any such dispute shall be borne equally by the Commonwealth and the City.

ARTICLE VII

FISCAL YEAR

SECTION 7.1 Fiscal Year. The Fiscal Year of the Corporation shall correspond to the twelve-month period from July 1 of one calendar year to June 30 of the following calendar year, or such other dates as the Board may determine.

ARTICLE VIII

AMENDMENTS TO THE BYLAWS

SECTION 8.1. Recommendation by Board; Approval by Members.

(a) Amendments to the bylaws may be made only upon affirmative recommendation of the Board and, except as provided elsewhere in these bylaws, the quorum and voting requirements for the Board with respect to such amendments are as specified in this Article VIII.

(b) The Commonwealth and the City shall each have the power to veto any matter concerning amendments to the bylaws of the Corporation.

SECTION 8.2. Consideration by the Board.

(a) Whenever an amendment to these bylaws is proposed, action on the proposal shall be deferred until a regular or special meeting of the Board to be held after at least 15 days' notice shall be given specifying the proposed amendment to be considered.

(b) The presence of all directors entitled to vote shall be necessary to constitute a quorum for the approval of an amendment to these bylaws.

SECTION 8.3. Attendance at Meetings.

(a) If a director has been sent proper notices of meetings for approval of any amendment to the bylaws referred to in this Article VIII, and that director has failed to appear for two consecutive proposed meetings for such approval, and notices for a third meeting for that purpose have been properly given under these bylaws, even if that director fails to appear for that meeting in person, that director shall be deemed present for the purpose of constituting a quorum.

(b) Notwithstanding any other provisions of these bylaws, second or third meeting notices given for the reasons or purposes referred to in this section, need only allow five (5) days between the date of the notice and the date of the proposed meeting.

ARTICLE IX

INDEMNIFICATION OF MEMBERS, OFFICERS,

DIRECTORS AND OTHER PERSONS

SECTION 9.1. Directors' Liability. No director of the Corporation shall be personally liable for monetary damages as such for any action taken or any failure to take any action unless: (a) the director has breached or failed to perform the duties of his or her office under Section 8363 of the Pennsylvania Directors' Liability Act (relating to standard of care and justifiable reliance), and (b) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness; provided, however, that the provisions of this Section shall not apply to the responsibility or liability of a director pursuant to any criminal statute, or to the liability of a director for the payment of taxes pursuant to local, State or Federal law.

SECTION 9.2. Indemnification. The Corporation shall indemnify any person who is a member, officer, or director of the Corporation from and against

expenses (including legal fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by that person, to the fullest extent now or hereafter permitted by law, in connection with any pending or completed action, suit or proceeding, whether civil, administrative or investigative, brought or threatened to be brought against that person, by reason of the fact that that person is or was a member, director or officer of the Corporation or acted as a member, director or officer or in any other capacity on behalf of the Corporation or is or was serving at the request of the Corporation as a member, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

The Board of Directors by resolution may similarly indemnify any person other than a member, director or officer of the Corporation to the fullest extent now or hereafter permitted by law for liabilities incurred by that person in connection with services rendered by that person for or at the request of the Corporation.

The provisions of this Section shall be applicable to all actions, suits or proceedings commenced after its adoption, whether they arise out of acts or omissions which occurred prior or subsequent to its adoption, and shall continue as to a person who has ceased to be a member, director or officer or to render services for or at the request of the Corporation, and shall inure to the benefit of the heirs, executors and administrators of such a person. The right of indemnification provided for in these bylaws shall not be deemed the exclusive right to which any member, director, officer, employee or agent of the Corporation may be entitled.

SECTION 9.3. Advances. The Corporation may pay the expenses incurred by any person entitled to be indemnified by the Corporation in defending a civil action, suit or proceeding in advance of the final disposition of such an

action, suit or proceeding upon receipt of an undertaking, by or on behalf of that person, to repay those amounts unless it shall be determined ultimately that the person involved is entitled to be indemnified by the Corporation as authorized by law.

SECTION 9.4. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a member, officer, director, employee or agent of the Corporation against any liability asserted against that person or incurred by that person in any such capacity or arising out of that person's status as such.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. Headings. All headings appearing in these bylaws are for convenience only and are not to be considered an interpretation of any terms or conditions of these bylaws.

SECTION 10.2. Interpretation of Bylaws. All words, terms and provisions of these bylaws shall be interpreted and defined by and in accordance with the Non-Profit Corporation Law of 1972 of the Commonwealth of Pennsylvania, as amended, 15 Pa. C.S.A. § 7301 et seq.

SECTION 10.3. Use of Conference Telephone and Similar Equipment. One or more persons may participate in a meeting of the Board, or of the members or of any committee of the Board, or of the members or of any committee of the Board or members by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence in person at that meeting.

SECTION 10.4. Written Consent. Any action which may be taken at a meeting under these bylaws may be taken without a meeting if a consent or con-

sents in writing setting forth the action shall be signed by all of the persons entitled to vote on it and shall be filed with the Secretary of the Corporation.

SECTION 10.5. Annual Report. The Board shall present to the members annually a report (which shall be filed with the minutes of meetings of members), verified by the President and the Chairman of the Board or by directors who are entitled to cast a majority of the votes, and who are a numerical majority of the directors, showing in appropriate detail the following:

(a) The assets and liabilities of the Corporation as of the end of the Fiscal Year immediately preceding the date of the report.

(b) The principal changes in assets and liabilities during the year immediately preceding the date of the report.

(c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the Fiscal Year immediately preceding the date of the report, including separate data with respect to each account held by or for the Corporation.

(d) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the Fiscal Year immediately preceding the date of the report, including separate data with respect to each account held by or for the Corporation.

(e) The number of members of the Corporation (and the number of votes which each member is entitled to cast) as of the date of the report, together with a statement of increase or decrease in those numbers during the Fiscal Year immediately preceding the date of the report, together with a statement of the place where the names and addresses of the current members may be found.

MAINTENANCE SPECIFICATIONS

Responsibility for the maintenance, repair, and operating cost of the leased premises shall be as follows:

a. Structures. Responsibility and costs for the maintenance and repair of structures within the leased premises shall be allocated as follows:

1. The Commonwealth shall be responsible for the structural integrity of all project structural elements, and for the maintenance of the surface finish and appearance of those structural elements which can be accessed only from the Commonwealth's limited access right of way not leased to the City, including but not limited to depressed and elevated Expressway section retaining walls, bridges, planter structures, and noise walls, whether located inside or outside of the limited access lines, except as provided in Paragraph a(2).

2. The City shall be responsible for the maintenance of the surface finish and appearance of those project structural elements which can be accessed from outside the

Commonwealth's limited access right of way not leased to the City, including but not limited to elevated section retaining walls, bridges, bridge piers and abutments, planters structures, and noise walls, whether located inside or outside the limited access lines.

b. Surface Areas. The City shall be responsible for, and pay the cost of, maintaining, developing, operating and policing the surface of the leased premises, including viaduct areas, non-viaduct areas and the I-95 cover areas. The City shall, at its sole expense, keep and maintain the leased premises in an orderly, clean, safe and sanitary condition, free of all weeds, debris and inflammable materials of every description. These responsibilities shall include paving, security fencing, lighting, inlets, guiderail, bollards, landscaping, surface treatments and wall elements. Landscaping responsibility includes, but is not limited to, mowing, fertilizing, watering, weeding and replacement of dead and diseased plant material. The City is further responsible for all sidewall street trees and tree pits and planter box landscaping within the leased premises, including but not limited to pruning, spraying, fertilizing, watering, weeding, and replacement of dead and diseased plant material as necessary to maintain the plantings in a healthy condition.

c. City shall remove snow, ice, and graffiti from the leased premises as soon as practical after its appearance. Mowing, weeding, and fertilizing shall be done on a regular basis. Trash shall be removed on a monthly basis.

d. The leased premises is shown on the map attached to the Joint-Use Lease Agreement as Exhibit F. Attached hereto is a listing of the structural elements within the leased premises.

STRUCTURAL ELEMENTS ON PREMISES

<u>CONSTRUCTION</u>		<u>LIMITS</u>	<u>ELEMENTS</u> (Located within limited access right-of-way)
<u>SECTION</u>	<u>STATIONS</u>		
LR 1000, Section A3	114+60 to 120+56	Mainline from Oregon Avenue to Shunk Street	Substructure and superstructure for prestressed concrete I-beam viaduct
LR 1000, Section A4	120+56 to 150+52	Mainline from Shunk Street to Mifflin Street	Substructure and superstructure for prestressed concrete I-beam viaduct
	313+48 to 328+12	Ramp C (Morris Street ramp to I95 southbound)	Substructure, superstructure, and retaining walls
	400+00 to 410+16	Ramp D (Tasker Street ramp from I95 northbound)	Substructure, superstructure, and retaining walls
LR 1000, Section A5	150+52 to 200+12	Mainline from Mifflin Street to Catharine Street	Substructure, superstructure, and retaining walls
LR 1000, Section B52	205+00 to 230+00	Mainline from Lombard Street to Chestnut Street	Retaining walls, tunnel, and highway cover structures
LR 1000, Section B53	230+00 to 249+00	Mainline from Chestnut Street Race Street	Substructure, superstructure, retaining walls
LR 1000, Section B51	200+12 to 205+00	Mainline from Catharine Street to Lombard Street	Retaining wall associated with west side joint use area

Draft - 3/26/90

FORM LEASE

and

WITNESSETH:

Exhibit "C"

Section , in the City and County of Philadelphia,
Pennsylvania, from the Commonwealth of Pennsylvania, Department
of Transportation (Commonwealth), under a joint-use agreement
dated , 1990; and,

WHEREAS, the joint-use agreement allows the City to
sublet the premises to LESSOR subject to its terms and
conditions, and the sublease agreement allows LESSOR to further
sublet the premises to other parties subject to its terms and
conditions and those of the joint-use agreement; and,

WHEREAS, LESSEE has made application to LESSOR to lease
the area within the right-of-way limits of Section of
Legislative Route 1000, City of Philadelphia, Pennsylvania, more
particularly identified on a plan attached hereto and
incorporated herein as Exhibit .

WHEREAS, LESSOR is willing to approve LESSEE's
application for the lease within that area beneath the elevated
highway within the limits of its right-of-way to be leased and
developed at LESSEE's cost and expense and in accordance with
plans and specifications attached hereto and incorporated herein
as Exhibits .

NOW THEREFORE, in consideration of the terms,
conditions, covenants and performances contained herein, and with

the intention of being legally bound, the parties hereto agree as follows:

PREMISES

1. LESSOR, pursuant to its sublease agreement with PAID, PAID's sublease agreement with the City, and the City's joint-use agreement with Commonwealth, does hereby lease to LESSEE the area beneath the elevated highway within Commonwealth's right-of-way for Section of Legislative Route 1000 in the City and County of Philadelphia, Pennsylvania, more particularly identified on plans attached hereto as Exhibit A (improvement plan) and Exhibit B (metes and bounds description) and made a part hereof, which real estate, together with improvements made thereon in accordance with the provisions of this lease, is hereunder sometimes referred to as the "premises."

TERM

2. Subject to LESSOR's right of termination as hereinafter provided, the term of this lease shall be commencing on the date of its execution by all parties hereto.

3. If LESSEE shall hold over after the expiration of the Term, such tenancy shall be from month to month on all terms, covenants and conditions of this lease prevailing in the year immediately preceding such holding over.

RENT

4. LESSEE will pay LESSOR rent of per month, said rent to be reevaluated biennially by LESSOR based on fair market rental. Said rent shall be payable in advance at

5. LESSOR shall give thirty (30) days written notice to the LESSEE that a rent adjustment is being made. This notice shall include the amount of the adjusted rental rate and the date the new rate is to become effective. Failure or refusal by the LESSEE to pay the adjusted rental rate shall constitute a breach of this lease and entitle LESSOR to legal recourse.

6. If any payment of rent or if any other sum due LESSOR is not received by LESSOR or postmarked by the due date, a late charge of one percent (1%) of the amount due and unpaid plus \$25.00 administration fee shall be added to the amount due and the total sum shall become immediately due and payable to LESSOR. Each additional month that the amount due goes unpaid shall be subject to a late charge of one percent (1%) of that month's rent plus an administration fee of \$25.00. Also there shall be a charge of \$10.00 for any check returned uncollectible. LESSOR and LESSEE agree that such charges represent a fair and reasonable estimate of the costs incurred by LESSOR by reason of late payment.

7. Acceptance of late payment charges and/or any portion of the overdue payment by LESSOR shall in no event constitute a waiver of LESSEE's default with respect to such overdue payment, nor prevent LESSOR from exercising any other rights and remedies granted in this lease.

USE OF PREMISES

8. The premises shall be used during the term of the lease [for a public parking area]. No other use shall be permitted without prior written approval of LESSOR.

9. LESSEE shall secure all necessary permits required in connection with use of the premises and shall comply with all Federal, State and local statutes, laws, ordinances, rules or regulations which may affect, in any respect, LESSEE's use of the premises, including Section 2002(c) of the Administrative Code of 1929, 71 P.S. §512(c), 67 Pa. Code §495.1 et seq, entitled "Rental of Real Property" and 23 CFR §713.204 et seq, entitled "Management of Air Space". This lease is also subject to the terms of the sublease agreements between LESSOR and PAID, and PAID and City, and to the terms of the joint-use agreement between the City and Commonwealth.

10. LESSEE shall not permit installation of, nor operate on the premises, a gasoline supply station; nor shall

vehicles used or designed for the transportation of gasoline or petroleum products be permitted on the premises.

11. The premises shall not be used for the manufacture or storage of flammable, explosive or hazardous substance or for any occupation which is deemed by LESSOR to be a hazard to either highway or non-highway users.

12. The use of the premises shall be such that no hazardous or unreasonably objectionable smoke, fumes, vapor, odors, or discharge of any kind shall be permitted to rise above the grade line of the highway facility.

13. LESSEE agrees to provide protection against vehicular hits or other likely causes of damage arising from the nature of its use of the premises to all piers exposed to such potential damage under any elevated highway structure existing on the site. Such pier protection shall be provided to the satisfaction of LESSOR prior to occupancy.

14. LESSEE shall not weld any metal objects to any metal member of any metal structure, nor drill into any pier or beam on any concrete, metal or wood structure without LESSOR's specific written approval of detailed drawings for such welding or drilling.

15. LESSEE shall at its own expense make any provisions it deems necessary to protect users of its proposed facility from any hazards resulting from use and operation of the highway.

16. LESSEE shall not use or occupy the premises or any part thereof, nor allow such premises to be used or occupied, for any unlawful or illegal business, use or purpose, or in such a manner as to constitute a nuisance of any kind, or for any purpose or in any way in violation of any present or future governmental law, ordinance, requirement, order, direction, rule or regulation. LESSEE shall police the premises and enforce compliance by all persons authorized to use the same with all statutes, laws, regulations, rules and ordinances of Federal, State and local government.

17. No vending of any kind or character shall be conducted, permitted or allowed upon the premises.

IMPROVEMENTS

18. LESSOR may pave the premises and make such other minor or temporary improvements thereto as shall be necessary to properly use the premises for the purposes herein allowed.

19. Except as set forth in paragraph 18 above, LESSEE may not construct any permanent improvements on, or otherwise

alter, the premises without the approval of the Commonwealth pursuant to Article 10 of the joint use agreement.

20. All improvements constructed on the premises shall comply with all applicable local, state and federal laws, ordinances, codes and regulations.

21. All improvements shall be designed and constructed so as not to interfere with the safe use of the adjacent highways and streets. All improvements shall be constructed to permit access to the adjacent highway's structural elements for the purposes of inspection, maintenance and reconstruction of the structural elements.

22. Any improvements placed on, in or upon the premises shall be fire-resistant in accordance with the provisions of local applicable building codes and shall be made at the sole expense of LESSEE in conformity with plans to be submitted to the Commonwealth for approval.

23. LESSOR will not compensate or reimburse LESSEE upon termination of this lease for any improvements, alterations or additions to the premises.

24. LESSEE may erect only such directional or operational signs as approved by LESSOR in writing prior to their

erection. No signs shall be attached to or painted on elevated structures of the highway. Further, any on-premise signs, displays or devices erected on structures occupying highway air space shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by the Pennsylvania Department of Transportation (PennDOT) and the Federal Highway Administration (FHWA) with respect to number, size, location and design.

MAINTENANCE

25. LESSEE shall, at its sole expense and risk, keep and maintain, or cause to be maintained, the premises free of all tall grass, weeds, debris, and inflammable materials of every description (other than fuels, solvents, oils and other material in parked vehicles), and at all times in an orderly, clean, safe, and sanitary condition. A high standard of cleanliness, consistent with the location of the area as an adjunct of the Commonwealth of Pennsylvania Highway System, will be required.

26. LESSOR has no obligation to make repairs or alterations, or provide any maintenance whatsoever in regard to the premises. LESSEE agrees that no claim will be made against LESSOR arising out of the condition of the premises and/or the occupancy thereof by LESSEE, or any person entering upon the same with the approval of LESSEE, expressed or implied.

27. LESSEE shall, throughout the term of this lease, maintain and keep the premises from waste and nuisance, and shall deliver up the premises in a clean and sanitary condition, reasonable wear and tear excepted. In the event LESSEE shall neglect to reasonably maintain the premises, LESSOR shall have the right, but not the obligation, to cause repairs or corrections to be made, and any costs therefor shall be payable by LESSEE to LESSOR as additional payments hereunder on the next payment date.

ACCESS

28. Limited access designations, if any, through or around the premises shall remain as such, subject to the terms of this provision. Ingress, egress and regress to and from the premises shall be limited to the purposes of this lease and shall be confined to those access points necessary for use of the premises. If requested by LESSOR and only at the direction of LESSOR, right of way of way fencing, if any, must be relocated or erected by LESSEE at the line separating the premises from the limited access area retained by the Commonwealth for the free movement of traffic, all at the sole cost and expense of LESSEE.

29. LESSEE, at its own cost and expense, shall maintain the premises including all driveways and fences and guiderails heretofore or hereafter erected. LESSEE shall at its

expense acquire occupancy permits for and install and maintain such highway entrances as shown on the improvement plan approved under this lease.

30. LESSEE shall take all steps necessary to effectively protect Commonwealth's fences and guiderails from damage incident to LESSEE's use of such premises, all without expense to LESSOR. LESSEE shall be liable to the Commonwealth and shall reimburse the Commonwealth for any damages to Commonwealth-owned fences, guiderails, piers, columns or other objects in any way resulting from or attributable to the use and occupancy of said premises by LESSEE or any person entering upon the same with the approval of LESSEE, expressed or implied.

31. Proposed plans for fence openings, wheel rails, guiderails, and lighting shall be filed with and approved by the Commonwealth, subject to concurrence by the Federal Highway Administration, prior to the commencement of any such work.

IMPOSITIONS AND UTILITY CHARGES

32. LESSEE shall pay, or cause to be paid, before delinquency, all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, or payments in lieu thereof, whether general or special, ordinary or extraordinary, together with interest and penalties, which are

levied upon or assessed against all or any part of the premises or the use or occupancy of all or any part of the premises. Specifically, LESSEE agrees to make all payments in lieu of taxes which may be levied on the premises during the term of this Lease as provided in Section 2002(c) of the Administrative Code of 1929, as amended, 71 P.S. §512(c), and 67 Pa. Code §495.9. LESSEE is responsible for and agrees to pay for all utilities which it arranges to serve the premises.

33. LESSEE agrees to and shall protect and hold harmless LESSOR, Commonwealth and the premises from liability for any and all such taxes, assessments and charges, together with any interests, penalties or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof.

RIGHT OF ENTRY

34. LESSOR specifically reserves the right to entry by any authorized officer, engineer, employee, contractor or agent of LESSOR at all reasonable times for the purpose of inspecting the premises, or the doing of any and all acts necessary or proper on the premises in connection with the protection, maintenance, repair, alteration, painting and operation of the highway and its appurtenances; provided, further, that LESSOR reserves the further right, at its discretion, to immediate entry upon the premises and to take immediate possession of the same in

case of any national or other emergency, or for the purpose of preventing sabotage, or for the protection of the highway. In the event of an occupancy for an emergency, LESSEE shall be relieved from the performance of all conditions or covenants specified herein during the term of LESSOR's occupancy. LESSOR shall in no way be responsible for any damages, including incidental or consequential damages, due to any entry.

INDEMNIFICATION

35. LESSEE shall occupy and use the premises at its own risk and expense, and agrees to indemnify, hold harmless and defend (if requested) LESSOR, PAID, City, Commonwealth, and the Federal Highway Administration, and their respective officers and employees, from and against any and all claims, suits and actions brought for, or on account of, any loss or damage sustained due to any act or omission of LESSEE or by anyone entering upon the premises with LESSEE's approval, expressed or implied.

TOXIC CONTAMINATION

36. In the event of contamination, or of a condition that could give rise to contamination, it is expressly understood and agreed that LESSOR does not assume or agree to be responsible for, and LESSEE hereby agrees to indemnify and hold LESSOR harmless from and against any and all claims, obligations and

liabilities and all costs, expenses and attorneys' fees incurred, based upon or arising out of any obligation, liability, loss, damage or expense of whatever kind or nature, contingent or otherwise, known or unknown, incurred under, or imposed by, any provision of federal, state or local law or regulation, or common law, pertaining to health, safety or environmental protection and arising out of any act or omission by LESSEE, including without limitation such laws or regulations pertaining to the storage, transportation, handling, disposal, discharge, presence or use of hazardous substances. It is understood and agreed that the obligation to indemnify and hold harmless shall be a continuing obligation not subject to any limitation set forth in this lease. "Contamination" means the uncontained presence of hazardous substances at the premises, or arising from the premises, which may require remediation under any applicable federal, state or local law or regulation, or common law. "Hazardous substance" means any substance defined in 42 U.S.C. §4601(14) and petroleum as defined in 42 U.S.C. §6991(8).

37. LESSEE represents and warrants that all operations on the premises known to LESSEE are, and will be, in compliance with all applicable federal, state and local laws and regulations, or common law, pertaining to health, safety or environmental protection. It is understood and agreed that

LESSEE has an obligation to handle any hazardous substance in a manner which does not present an undue risk of contamination.

38. It is understood and agreed that it is prohibited to install above-ground or underground storage tanks for hazardous substances. In addition, LESSEE represents and warrants that it will not participate in or approve of any installation of such storage tanks; and, LESSEE hereby agrees to indemnify and hold LESSOR harmless from and against any and all claims, obligations and liabilities and all costs, expenses and attorneys' fees incurred, based upon or arising out of any obligation, liability, loss, damage or expense of whatever kind or nature, contingent or otherwise, known or unknown, incurred under, or imposed by, any provision of federal, state or local law or regulation, or common law, pertaining to health, safety or environmental protection and arising out of any act or omission by LESSEE with regard to installation of such storage tanks.

39. LESSEE represents and warrants that it will furnish LESSOR complete copies of all correspondence with and submissions to agencies under any federal, state or local law or regulation, or common law, requiring reporting or correspondence pertaining to health, safety or environmental protection, including but not limited to those under the Hazard Communication Standard of the Federal Occupational Safety and Health Act, Title III of the Superfund Amendments and Reauthorization Act of 1986,

and the Pennsylvania Worker and Community Right to Know Act. Said copies shall be furnished to LESSOR pursuant to the notice requirement of paragraph 63 of this lease. It is understood and agreed that LESSEE will cooperate with LESSOR with regard to any inspection related to hazardous substances or storage tanks.

INSURANCE

40. LESSEE shall, at its own expense, purchase and keep in force during the term of this Lease the following insurance:

(a) Comprehensive General Liability Insurance, with broad form endorsement, covering personal injury, and property damage occurring in, on or about the premises in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury (including death) and One Million Dollars (\$1,000,000.00) for property damage. The insurance required by this paragraph shall include endorsements for contractual liability, independent contractors, premises/operations, and products/completed operations.

(b) All-Risk Extended Coverage Insurance, naming Commonwealth and City as loss payees, insuring all improvements

on the applicable portion of the premises against loss or damage from fire, flood, theft and other casualties (including, without limitation, vandalism and malicious mischief) in an amount equal to the full insurable replacement value of the improvements on the applicable portion of the premises.

(c) Worker's compensation insurance covering all persons employed in connection with any work done on or about the applicable portion of the premises, as required by law.

41. All insurance policies shall inure to the contingent liabilities, if any, of LESSEE and LESSOR. If the policies contain any exclusion concerning property in the care, custody, or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of LESSEE and LESSOR.

42. All insurance policies required by this lease shall name Commonwealth, City, PAID and LESSOR as additional insureds, as their interests may appear. All insurance policies required by this lease shall include the following cross liability endorsement.

"CROSS LIABILITY: It is understood and agreed that the insurance afforded by this policy or policies for more than one insured shall not operate to increase the limits of the companies' liability, but otherwise shall not operate to limit or void the coverage of any one insured as respects

claims against the same insured by any other insured or the employees of such other insured."

43. Each policy of insurance shall include an endorsement that such policy shall not be cancelled, changed or permitted to expire without at least thirty (30) days prior written notice to Commonwealth, City and LESSOR. Unless otherwise stated, all insurance required herein shall be obtained under valid and enforceable policies issued by insurers authorized to transact business in the Commonwealth of Pennsylvania.

44. Coverage in the minimum amount set forth herein shall not be construed to relieve LESSEE from liability in excess of such coverage.

ASSIGNMENTS, SUBLETTING AND LIENS

45. Except as expressly set forth herein, LESSEE may not sublet, assign, pledge, mortgage or otherwise transfer or encumber the premises or any part of the premises, nor permit the same to be used or occupied by anyone without the prior written approval of LESSOR, which approval shall not be unreasonably withheld or delayed.

46. The terms and provisions of this lease shall extend to, be binding upon, and inure to the benefit of any successor or assign of LESSEE, except as set forth below.

47. With the prior written approval of LESSOR, LESSEE may grant a leasehold mortgage on the premises. The granting of a leasehold mortgage shall not constitute an assignment of this lease, nor shall any leasehold mortgagee not in possession be deemed an assignee of this lease, or any other agreement, nor a sublessee of any portion of the premises so as to require such leasehold mortgagee to assume the obligations of City under the joint-use lease, of PAID under the sublease agreement, or of LESSEE herein. A leasehold mortgagee in possession and the purchaser at any sale of all or any portion of the premises upon foreclosure of any leasehold mortgage, or the assignee of any portion of the premises pursuant to an assignment in lieu of foreclosure, shall be deemed to be an assignee of LESSEE, and shall be deemed to have assumed the obligations of LESSEE from and after the date of such purchase or assignment. LESSEE shall give, or cause to be given, written notice to LESSOR and City of all leasehold mortgagees.

48. LESSOR shall give notice of any event of default to all leasehold mortgagees affected by the event of default. LESSOR shall not terminate this lease if a leasehold mortgagee has caused the event of default and after giving notice of the

event of default to the leasehold mortgagee, such leasehold mortgagee notifies LESSOR within thirty (30) days thereafter that such leasehold mortgagee intends to remedy such event of default and, within thirty (30) days after such notice to LESSOR, commences and diligently pursues the cure of such event of default. A leasehold mortgagee shall, upon giving notice to LESSOR of its intent to cure an event of default, be given a three-month period in which to remedy the event of default. LESSOR shall accept the performance of any leasehold mortgagee as though the performance had been done by LESSEE.

49. Nothing in this lease shall be deemed to make LESSEE the agent of LESSOR for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the premises.

50. The LESSEE shall at all times indemnify and save LESSOR harmless from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the premises, and from the cost of defending against such claims, including attorney fees.

51. In the event a lien is filed upon the premises, LESSEE shall either:

- a. record a valid Release of Lien, or
- b. deposit sufficient cash with LESSOR to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim, or
- c. procure and record a bond which frees the leased premises from the claim of the lien and from any action brought to foreclose the lien.

Should LESSEE fail to accomplish one of the three optional actions within 15 days after the filing of such a lien, this lease shall be in default and shall be subject to immediate termination.

DISCRIMINATION PROVISIONS

52. LESSEE, for itself, its successors and assigns, as part of the consideration hereof, hereby covenants and agrees (a) that no person, on the ground of race, color, religion, sex or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of the premises; (b) that in connection with the construction of any improvements on the premises and the furnishing of services thereon, no discrimination shall be

practiced in the selection of employees, contractors or subcontractors; (c) that no discrimination shall be practiced against the public in access to and use of the premises; and (d) that LESSEE shall use the premises pursuant to the provisions of the Commonwealth's nondiscrimination Federal and State equal opportunity requirements as set forth in Exhibit C attached hereto and made a part hereof.

53. The breach of any of the nondiscrimination covenants shall be a material act of default entitling LESSOR to terminate this lease in accordance with the procedures set forth herein.

QUIET ENJOYMENT AND TERMINATION

54. Subject to the termination provisions herein, LESSOR covenants and agrees with LESSEE that LESSEE, keeping and performing the covenants and agreements herein contained on the part of LESSEE to be kept and performed, shall at all times during the term of said lease peaceably and quietly have, hold and enjoy the premises, without suit, trouble, or hindrance from LESSOR.

55. Upon thirty (30) days written notice, LESSOR may terminate this lease in the event it has been notified by the

Commonwealth that the premises are needed for highway or related transportation purposes.

56. Upon sixty (60) days written notice, LESSOR may terminate this lease if LESSEE discontinues use of the premises for more than a continuous sixty (60) day period, or if LESSEE attempts to sell or assign these premises without the written consent of LESSOR.

57. Upon thirty (30) days written notice of noncompliance with any term or condition of this lease, LESSOR may terminate the lease. Noncompliance with the lease occurs only after failure to comply with the term or condition of the lease has continued for sixty (60) days after receipt of notice of such failure from LESSOR, or if such failure cannot reasonably be cured within sixty (60) days, if LESSEE has failed within such sixty (60) day period to take such action as would reasonably be taken to cure such failure.

58. Upon thirty (30) days written notice, LESSOR may terminate this lease if the joint-use agreement between the Commonwealth and the City has been terminated in its entirety. If the joint-use agreement is terminated, but the Commonwealth chooses to recognize this sublease, LESSEE shall recognize the Commonwealth as its LESSOR under and subject to all of the terms and conditions of this lease and the joint-use agreement.

59. In the event of the termination of this lease in whole or in part, LESSEE will peaceably and quietly leave, surrender and yield up to LESSOR all or the part of the premises in question with all appurtenances and fixtures in good order, condition and repair, reasonable wear and tear excepted, and damage by earthquake, by fire, by public calamity, by act of God or by any other circumstances over which LESSOR has no responsibility or control excepted. The further use of the premises or part thereof after such termination by LESSOR shall be deemed, held and taken as a forceable detainer thereof by LESSEE, and LESSOR may, without notice, re-enter and take possession thereof, and with or without force, and with or without legal process; and if any suit be brought by LESSOR against LESSEE for the breach of any condition or covenant herein contained by LESSEE, or any summary action be brought by LESSOR for forfeiture of this lease, or to recover possession of the premises or part thereof, LESSEE agrees to pay reasonable attorneys' fees and costs for commencing and prosecuting said action.

60. Any signs or other appurtenances placed on State-owned property pursuant to any provision hereof are the personal property of LESSEE and shall be removed by LESSEE, excepting those appurtenances specifically excluded below, upon the termination of this lease, and said property shall be restored to its previous condition, excepting any paving, resurfacing or

recontouring to the property, or wheel rails and column guards, at the expense of LESSEE and without any expenditure by LESSOR, provided, that if any such signs or appurtenances, excepting those specifically excluded herein, are not so removed after thirty (30) days' written notice from LESSOR to LESSEE, LESSOR may proceed to remove the same and to restore the said premises, and LESSEE shall pay LESSOR, upon demand, the reasonable cost and expense to it of such removal and restoration, or LESSOR may, in its absolute discretion, elect to declare the same the property of LESSOR, whereupon all right, title and interest of LESSEE therein shall forthwith terminate.

61. Upon termination of this lease under any provision, buildings constructed or placed on the premises shall become the property of LESSOR or, at the option of LESSOR, may be removed by LESSEE at its own expense in a manner prescribed by LESSOR.

GENERAL TERMS

62. Pennsylvania Law to Apply: This lease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

63. Notices: Any notice under the terms of this lease shall be in writing and shall be sent by registered or certified

mail, postage prepaid. If such notice is given by LESSEE, it shall be submitted to

; and if given by LESSOR, such notice shall be submitted to

64. Parties Bound: This lease shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective assigns and successors in interest, whether by operation of law or otherwise.

65. Complete Agreement: This lease sets forth all the promises, agreements, conditions and understandings between LESSOR and LESSEE relating to this matter, except as specifically excepted in this lease. There are no promises, agreements, conditions or understandings, either oral or written, between LESSOR and LESSEE other than those set forth in this and those associated agreements referred to herein.

66. Article Numbers and Captions: The captions, article numbers and paragraph numbers appearing in this lease are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this lease or in any way affecting this lease.

67. Partial Invalidity: If any term, covenant or condition of this lease, or the application thereof to any party or circumstance, is held to be invalid or unenforceable, the remainder of this lease, or the application of such term, covenant or condition to parties or circumstances other than those to which the lease was held invalid or unenforceable, shall not be affected by the holding of invalidity or unenforceability. Each remaining term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

68. Amendment; Governing Law: This lease may only be amended, modified or supplemented by an agreement, in writing, signed by both LESSOR and LESSEE.

69. Survival: Any agreement, covenant or condition set forth in this lease which, by its nature, would reasonably be expected to be performed after the expiration or earlier termination of this lease shall survive and be enforceable after the expiration or earlier termination of this lease. Any and all liabilities, actual or contingent, which shall have arisen in connection with this lease, shall survive any termination of this lease.

70. Covenants Independent: Performance of all of the terms, covenants and conditions of this lease shall be

independent of the performance of all and every other term, covenant and condition of this lease.

71. Waiver of Conditions: No obligation of any party under this lease shall be deemed waived, and no breach excused unless such waiver or consent shall be in writing and signed by the authorized official. Any consent to, or waiver of, a breach under this lease, whether express or implied, shall not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach.

72. Rights and Remedies Cumulative: The rights and remedies provided by this lease are cumulative, and the use or non-use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

73. Waiver of Act 1979-100 Rights: LESSEE waives any rights that it may have under the terms of Act 1979-100, 71 P.S. §513(e)(7), in the event any part of the premises is sold by Commonwealth.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be signed, sealed and delivered on this date by their

proper officials, pursuant to due and legal action authorizing
the same to be done.

ATTEST:

INTERSTATE LAND
MANAGEMENT CORPORATION

Signature Date

BY _____
Signature Date

Title
(SEAL)

Title

ATTEST:

Title Date

BY _____
Date



FEDERAL NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY CLAUSES (All Federal Aid Contracts) *

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contract will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under section 2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of Section 2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or in threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. **Compliance With Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations) which are herein incorporated by reference and made a part of this contract.

b. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment

*Not to be used if otherwise included in Construction or Appalachian Contract Provisions.

practices when the contract covers a program set forth in the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(1) withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Wherever hereinabove the word "contractor" is used, it shall also include the word engineer, consultant, researcher, or other entity (governmental, corporate, or otherwise), its successors and assigns as may be appropriate.

COMMONWEALTH NONDISCRIMINATION CLAUSE (All Contracts)



During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
2. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
4. It shall be no defense to a finding of non-compliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.
6. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's non-compliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.
7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the contracting agency and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Affirmative Action.
8. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.
9. Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each Subcontractor.
10. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

(FIRM NAME)

DATE

BY _____

SIGNATURE AND TITLE

COMMONWEALTH NONDISCRIMINATION CLAUSE (All Contracts)



During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

2. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.

3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

4. It shall be no defense to a finding of non-compliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training pro-

gram or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's non-compliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.

7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the contracting agency and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Affirmative Action.

8. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

9. Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each Subcontractor.

10. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

(FIRM NAME)

DATE

BY

SIGNATURE AND TITLE



FEDERAL NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY CLAUSES (All Federal Aid Contracts) *

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contract will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under section 2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of Section 2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. **Compliance With Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations) which are herein incorporated by reference and made a part of this contract.

b. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment

*Not to be used if otherwise included in Construction or Appalachian Contract Provisions.

practices when the contract covers a program set forth in the Regulations.

c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

d. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(1) withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions:** The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Wherever hereinabove the word "contractor" is used, it shall also include the word engineer, consultant, researcher, or other entity (governmental, corporate, or otherwise), its successors and assigns as may be appropriate.

CONTRACTOR INTEGRITY PROVISIONS

1. Definitions.

a. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

b. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.

c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

d. Financial interest means:

- (1) ownership of more than a 5% interest in any business; or
- (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2. The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

3. The contractor shall not disclose to others any confidential information gained by virtue of this agreement.

4. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

5. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

6. Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

7. Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

8. The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

9. The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

10. The contractor shall, upon request of the Office of State Inspector General, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of the contractor of, concerning, and referring to this agreement with the Commonwealth or which are otherwise relevant to the enforcement of these provisions.

11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

EXHIBIT "L"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

OS-600 (3-89)

DATE: Office of Chief Counsel
January 14, 1998

SUBJECT: Philadelphia County
Joint Use Lease Agreement
Interstate Land Management Corporation
TO: City of Philadelphia
Sixth Amendment

FROM: John A. F. Hall
Deputy Attorney General
Review and Advice Section
Office of Attorney General
Strawberry Square

William J. Cressler
Assistant Chief Counsel
Real Property Division

Mr. Hall,

Application for 7th Amendment fee.

Thanks

BLC

WJC

Attached please find the ordinance by which the Commissioner of Public Property on behalf of the City of Philadelphia was authorized to enter into the Joint Use Lease Agreement in question, as well as a copy of the City's Charter authorizing the Department of Public Property to lease facilities as authorized by ordinance. Based on these documents, as well as prior dealings in this matter as shown through the attached original joint use lease agreement and five amendments thereto, one of which was approved just last fall, I am satisfied that the Commissioner of Public Property is the appropriate person to execute this document on behalf of the City of Philadelphia.

Thank you for your consideration of this memorandum. Please contact me if you have any questions.

220/WJC:sls
(717) 787-3128

cc: Michael H. Kline, Assistant Counsel in Charge



(Bill No. 545)

AN ORDINANCE

Authorizing the Commissioner of Public Property, on behalf of the City of Philadelphia, to enter into a Joint-Use Agreement with the Commonwealth of Pennsylvania pursuant to which certain parcels of real estate constituting the I-95 right-of-way, located beneath the elevated highway between the Benjamin Franklin Bridge and the Walt Whitman Bridge, shall be leased to the City by the Commonwealth, subleased by the City to the Philadelphia Authority for Industrial Development (P.A.I.D.), which shall in turn enter into a Second-Tier Sublease with the Interstate Land Management Corporation (I.L.M.C.), a non-profit corporation which shall have the duty to maintain the parcels on behalf of the City and market those areas not needed for the free movement of traffic, in order to generate funds for maintenance of parcels subject to the Joint-Use Agreement; and authorizing the appropriate City officials to take such actions and execute such contracts and other documents as are necessary to effectuate this Agreement; all under certain terms and conditions.

WHEREAS, The Commonwealth has under its jurisdiction certain property acquired for the construction and use of Interstate Route 95 (Legislative Route 1000, Section 795 Alternative) ("I-95"), also within the jurisdiction of the Federal Highway Administration; and,

WHEREAS, The Commonwealth has determined that certain portions of the I-95 right-of-way within the City of Philadelphia between the Walt Whitman Bridge and the

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enter into a Second-Tier Sublease with the Interstate Land Mangement Corporation, which shall have the duty to maintain and market said parcels on behalf of the City.

SECTION 2. The Joint-Use Agreement shall be substantially in the form set forth in Exhibit "I," which is attached hereto and made a part hereof.

SECTION 3. The appropriate City officials are authorized to take such actions, including execution of contracts and other documents, as are necessary to effectuate the purposes of this Ordinance.

SECTION 4. The Chief Clerk of City Council shall keep on file and make available for public inspection all exhibits referred to in this Ordinance.

SECTION 5. The City Solicitor shall include such other terms and conditions as he deems necessary or desirable to protect the best interests of the City.

Benjamin Franklin Bridge, most particularly those areas underneath the elevated highway, are not needed for the free movement of traffic and could be made available for joint-use leasing pursuant to Act 1978-37, as amended, 71 P.S. §512(c); and,

WHEREAS, The City has proposed that a land management body be established as a means to maintain and to market the leasing of the areas in question not needed for the free movement of traffic and thereby generate funds to maintain those areas not leased, especially the land underneath the elevated I-95. To this end, City and Commonwealth have cooperated in the establishment of the Interstate Land Management Corporation ("I.L.M.C."), a Pennsylvania non-profit corporation; and,

WHEREAS, In order to accomplish the transfer of maintenance obligations to I.L.M.C., the City or City-related agencies will execute a Master Lease/Joint-Use Agreement with the Commonwealth and will simultaneously execute several agreements incorporated in the Joint-Use Agreement by reference including: a Sublease Agreement between the City and the Philadelphia Authority for Industrial Development ("P.A.I.D."); a Second-Tier Sublease between P.A.I.D. and I.L.M.C.; and a Contribution Agreement between the City, P.A.I.D. and the Commonwealth, now therefore,

The Council of the City of Philadelphia hereby ordains:

SECTION 1. The Commissioner of Public Property, on behalf of the City of Philadelphia, is authorized to enter into a Joint-Use Agreement with the Commonwealth of Pennsylvania pursuant to which certain parcels of real estate constituting the I-95 right-of-way, located beneath the elevated highway between the Benjamin Franklin Bridge and the Walt Whitman Bridge, shall be leased to the City and subleased by the City to the Philadelphia Authority for Industrial Development, which shall in turn

ANNOTATION

Sources: No specific sources.

Purposes: While a Water Department is created by the Charter to deal with the water problem, it is not intended to preclude the City from creating, pursuant to an appropriate statute, an authority to take over any or all of the services of the Department or from contracting with a private operator to do so, if either course of action would be of advantage to the City and beneficial to its citizens.

CHAPTER 9

DEPARTMENT OF PUBLIC PROPERTY AND ITS DEPARTMENTAL COMMISSIONS

Section 5-900. Functions. The Department of Public Property shall have the power and its duty shall be to perform the following functions:

(a) *Buildings and Other Real Estate.*

(1) It shall keep clean and presentable, maintain and repair, or supervise the cleaning, maintenance and repair of, the corridors, court rooms, meeting rooms and other facilities in City Hall, City Hall Annex and all other City buildings and grounds, except that with the approval of the Managing Director any department, board or commission may perform such services itself as to any buildings and grounds which it occupies exclusively. The Department shall operate the elevators in City Hall and City Hall Annex and in all other City buildings in such a manner as to provide adequate and prompt service to the public. Except for such space as shall in the judgment of the President of the Council and the Mayor be required for the accommodation of the Council and its members, which shall be assigned as provided in the rules of the Council, the Department shall assign to the several courts and the judges thereof, court rooms, offices and other rooms and quarters for a law library and for the Philadelphia Bar Association, and meeting rooms for members of the bar, and to officers, commissions and other governmental agencies supported out of the City Treasury, and to the Mayor and other officers of the City, and all departments, boards and commissions thereof, suitable quarters in City Hall, City Hall Annex or other suitable buildings owned or leased by the City; but in the assignment of quarters, the Department shall arrange that the offices of the Director of Finance, Auditing Department, Department of Collections, and City Treasurer, shall be adjacent to each other.

(2) The Department shall itself, or by contract, provide telephone service through a City telephone exchange or otherwise for all offices and agencies occupying City Hall, City Hall Annex and all other buildings operated by the City for the accommodation of the public, but the Police Department and the Fire

Department may, jointly or separately, have separate telephone or other communication systems.

(3) Whenever the City shall have been authorized by ordinance or otherwise to erect a new building or to remodel or alter an existing building, the Department shall when necessary employ a suitable architect, and also when necessary an engineer, to design the same. When the plans have been approved by the Mayor, the Managing Director and the Art Commission, the Department shall cause appropriate specifications to be prepared which shall be submitted to the Mayor and Managing Director for approval. In the preparation of plans and specifications, the Department shall consult with the department, board or commission of the City or other governmental agency for whose use the building is being remodeled, altered or constructed. After a contract has been awarded, the Department shall supervise through its own engineers or otherwise, the remodeling, alteration or erection of the building under the contract.

(4) The Department shall, whenever authorized by ordinance, purchase, condemn in the manner provided by law, lease or otherwise acquire such grounds, buildings and building accommodations, structures and facilities as may be required by the City; and whenever any City real estate is not being used in connection with the work of any department, board or commission of the City or any other governmental agency, the Department may rent, or when authorized by the Council, sell the same upon the best terms obtainable after appropriate public advertising and the receipt of competitive bids.

(b) *Maintenance and Assignment of Automobiles and Other Vehicles.* The Department shall maintain and repair or supervise the maintenance and repair of all automobiles and other vehicles owned by the City and assign, upon proper requisition, to any officer, department, board, or commission of the City the use of such automobiles and other vehicles as may be required by him or it.

(c) *Transit Facilities.* The Department shall supervise the operation of leases of City transit facilities. It shall operate and itself, or by contract, maintain, repair and improve such facilities not under lease to others and when authorized by the Council, acquire, design and construct additional transit facilities.

(d) *Gas, Electricity and Steam.* The Department shall supervise the operation of leases of City facilities for the production and transmission of gas, electricity and steam. It shall operate and itself, or by contract, maintain, repair and improve City gas, electric and steam facilities not under lease to others and when authorized by the Council, acquire, design and construct additional such facilities. The Department shall from time to time inspect and test the quality of gas, electricity and steam furnished to the City and its inhabitants, and the facilities for their transmission and metering.

Purposes: Officers and employees are entitled to travelling and other necessary expenses actually incurred in the performance of their public duties but to prevent abuses the Administrative Board is to promulgate rules governing the circumstances under which such payments are to be made. See Section 4-300 (3) (a).

Section 8-107. Compensation for Extra Services. No additional compensation for extra services shall be paid to any officers or employees unless such payment is expressly authorized in the case of civil service employees by the pay plan and in all other instances by the Administrative Board prior to the rendering of such services and such authorization is certified to the City Controller.

ANNOTATION

Sources: The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, Section 213.

Purposes: Additional compensation for extra services has been known to be resorted to at times to increase the compensation of officers and employees when in fact there is no need for extra services. To prevent such abuses, additional compensation must be authorized by the pay plan in the case of civil service employees and in all other cases by the Administrative Board before the services are rendered. Authorization must be certified to the City Controller as a further check. See Annotation to Section 4-300 (1) (d).

CHAPTER 2

CONTRACTS, PROCUREMENT, PROPERTY AND RECORDS

Section 8-200. Contracts.

(1) Except in the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, competitive bids shall be secured before any purchase, by contract or otherwise, is made or before any contract is awarded for construction, alterations, repairs or maintenance or for rendering any services to the City other than professional services and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder.

(2) If any purchase or contract for which competitive bidding is required involves an expenditure of more than \$2,000.00, the following procedure shall be applicable:

(a) The Procurement Department shall advertise for sealed bids at least once a week for two weeks in one of the three newspapers having the largest paid circulation in the City and in such other newspapers as it deems necessary; The Department shall require a certified check in an appropriate amount which shall be stated in the specifications to accompany all bids unless a bidder has filed an annual bid bond in excess of such amount;

(b) Bids shall publicly be opened and tabulated in the presence of a representative of the City Controller at the time specified for their opening. The

Department may reject all bids if it shall deem it in the interest of the City so to do. Otherwise the contract shall be awarded to the lowest responsible bidder;

(c) Within ten days after the award of a contract, the successful bidder shall substitute for his certified check a performance bond, and where appropriate, a labor and materials bond containing such terms as the Department and the City Solicitor shall require and in such amount as the Department may determine;

(d) The contract shall be in writing and shall be executed in behalf of the City by the Procurement Department but only after it has been approved as to form by the City Solicitor and as to availability of funds under the budget and appropriations by the City Controller and the Director of Finance. It shall contain a provision that in the performance of the contract the contractor will not discriminate nor permit discrimination against any person because of his race, color, religion or national origin;

(e) The Procurement Department may in its discretion, permit a bidder to file an annual bond to cover bids that may be made by, or the performance of contracts that may be awarded to, such bidder during an annual period. Such bond shall be in such an amount as the Department may determine and may be increased from time to time, as the Department may require, in order to keep it commensurate with the bids made or contracts awarded during the annual period.

(3) Contracts may be made for the leasing of real estate and for personal property to be supplied or services to be rendered over a period of more than one year only when permitted by ordinance. Otherwise no contract shall be binding upon the City unless there is an appropriation available for its payment. When the term of a contract exceeds four years, there shall be inserted a clause reserving to the City the right to terminate it at the option of the City at any time after the expiration of four years without liability to the other party for damages or loss of profits which would have been realized had the contract not been terminated. The limitations of this paragraph shall not apply to any contract entered into between the City and any authority.

ANNOTATION

Sources: See Act of June 23, 1919, P.L. 581, Article XX; the Administrative Code of 1929, Act of April 9, 1922, P.L. 177, Sections 2408-2410, as amended; Purchasing Laws for State, County and City Governments (1941) pp. 28 et seq.

Purposes: 1. Competitive bidding is required as a rule to assure the City's obtaining its purchases and letting its contracts at the lowest prices. However, since the bidder submitting the lowest bid may by experience, reputation or resources not be capable of the performance required, the lowest bidder must also be a "responsible" bidder within the meaning of that term as established by many judicial decisions.

2. Unique articles and other articles which cannot be obtained in the open market are not subject to the requirement of competitive bidding. Obviously they are not articles as to